

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/1. Meaning of 'charity'.

CHARITIES (VOLUME 8 (2010) 5TH EDITION)

1. CHARITABLE PURPOSES

(1) ESSENTIALS OF CHARITABLE PURPOSES

1. Meaning of 'charity'.

For the purposes of the law of England and Wales, 'charity' means an institution which is established for charitable purposes¹ only and is subject to the control of the High Court in the exercise of its jurisdiction with respect to charities². 'Institution' means an institution whether incorporated or not, and includes a trust or undertaking³.

References to 'charity' in any Act of Parliament should be construed in their technical legal sense, unless a different definition of that term applies by virtue of that Act or any other enactment⁴. For income tax purposes 'charity' means any body of persons or trust established for charitable purposes only⁵. A reference in any enactment or document to a charity within the meaning of the Charitable Uses Act 1601⁶, or of the preamble to it, is to be construed as a reference to a charity its technical legal sense⁷.

The Charities Act 1960 established a register of charities⁸, which is continued by the Charities Act 1993⁹, and it is the duty of the charity trustees¹⁰ of any charity which is required to be registered¹¹ to apply for registration¹². The effect of registration is that an institution is for all purposes other than rectification of the register conclusively presumed to be or to have been a charity at any time when it is or was on the register of charities¹³. The legislation does not provide, however, that an institution which, if it were a charity, would be required to be registered, but which is not registered, is for that reason not a charity¹⁴.

1 As to the meaning of 'charitable purposes' see PAR 2.

2 Charities Act 2006 ss 1(1), 78(2)(a). This definition does not apply for the purposes of an enactment if a different definition of that term applies for those purposes by virtue of that or any other enactment, or, in the Charities Act 2006, where the context otherwise requires: ss 1(2), 78(7). Certain exclusions of ecclesiastical property contained in the Charities Act 1993 s 96(2) (see PAR 194) have effect in relation to references to a charity in the Charities Act 2006 as they have effect in relation to such references in the Charities Act 1993: Charities Act 2006 s 78(2). Such exclusion does not have effect in relation to reference to the Charities Act 2006 s 1 or any references to the law relating to charities in England and Wales, save where the context requires otherwise: s 78(3), (7).

'Enactment', except where the context otherwise requires, includes any provision of subordinate legislation within the meaning of the Interpretation Act 1978 (see **STATUTES**), a provision of a Measure of the Church Assembly or of the General Synod of the Church of England and, in the context of s 6(5) or 75(5) any provision made by or under an Act of the Scottish Parliament or Northern Ireland legislation: s 78(4), 78(7).

The requirement that an institution be subject to the control of the High Court in the exercise of the court's jurisdiction with respect to charities is satisfied if the institution is subject to that jurisdiction in any significant respect: see *Construction Industry Training Board v A-G* [1971] 3 All ER 449, [1971] 1 WLR 1303; affd [1973] Ch 173, [1972] 2 All ER 1339, CA. As to what is meant by 'the court's jurisdiction with respect to charities' cf Charities Act 1993 s 13(4) (see PAR 216), s 15 (see PARAS 182-183), s 33(8) (see PAR 586); and see *Construction Industry Training Board v A-G*. See also the *Report of the Charity Commissioners for England and Wales for 1990* (HC Paper (1990-91) no 362) App A (a). It does not have to be subject to that jurisdiction which the court exercises only over charities and not over other trusts or other corporate bodies, and it is sufficient if

the court is competent to restrain the institution from applying its property ultra vires or in breach of trust: *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA.

For territorial limits on the operation of the Charities Act 2006 see s 80(2)-(9). For territorial limits on the operation of the Charities Act 1993 see s 100(2)-(6) (amended by the Charities Act 2006 ss 23(5), 75(1), Sch 8 para 176). With limited exceptions, neither Act extends to Scotland or Northern Ireland.

3 Charities Act 2006 s 78(5); Charities Act 1993 s 97(1) (definition amended by the Charities Act 2006 Sch 8 para 174). This definition does not apply in the Charities Act 2006 where the context otherwise requires: s 78(7).

4 See the Charities Act 2006 s 1(2); and *Income Tax Special Purposes Comrs v Pemsell* [1891] AC 531 at 580, HL, per Lord Macnaghten; *Chesterman v Federal Taxation Comr* [1926] AC 128, PC; *Adamson v Melbourne and Metropolitan Board of Works* [1929] AC 142, PC. See also *Ashfield Municipal Council v Joyce* [1978] AC 122, [1976] 3 WLR 617, PC.

5 Income and Corporation Taxes Act 1988 s 506(1): see PARA 431.

6 le 43 Eliz 1 c 4 (1601).

7 Charities Act 2006 s 1(3)

8 See the Charities Act 1960 s 4(1) (repealed).

9 See the Charities Act 1993 s 3(1); and PARA 304.

10 'Charity trustees' means the persons having the general control and management of the administration of a charity: Charities Act 1993 s 97(1).

11 As to charities which are not required to be registered see the Charities Act 1993 s 3A(2); and PARA 305.

12 See the Charities Act 1993 s 3B(1); and PARA 306.

13 Charities Act 1993 s 4(1); and PARA 311. See also *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52; *Re Murawski's Will Trusts*, *Lloyds Bank Ltd v Royal Society for the Prevention of Cruelty to Animals* [1971] 2 All ER 328, [1971] 1 WLR 707.

14 See *Over Seventies Housing Association v Westminster City Council* [1974] RA 247; and PARA 311.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/2. Charitable purposes.

2. Charitable purposes.

Charitable uses or trusts form a distinct head of equity¹, and it is the court's duty to determine whether particular purposes are charitable². The popular use of the expressions 'charity', 'charitable', 'charitable objects' and 'charitable purposes' does not coincide with their technical legal meaning according to the law of England³. The word 'charitable', when used in its legal sense, covers many objects which a layman might not consider to be included under that word, but it excludes some benevolent or philanthropic activities which a layman might consider charitable⁴. Not every object which is beneficial to the community is charitable⁵.

For the purposes of the law of England and Wales, 'charitable purposes' means purposes which are for the public benefit⁶, and fall within any of the following descriptions of purposes⁷:

- 1 (1) the prevention or relief of poverty⁸;
- 2 (2) the advancement of education⁹;
- 3 (3) the advancement of religion¹⁰;
- 4 (4) the advancement of health or the saving of lives¹¹;
- 5 (5) the advancement of citizenship or community development¹²;
- 6 (6) the advancement of the arts, culture, heritage or science¹³;

- 7 (7) the advancement of amateur sport¹⁴;
- 8 (8) the advancement of human rights, conflict resolution or reconciliation or the
promotion of religious or racial harmony or equality and diversity¹⁵;
- 9 (9) the advancement of environmental protection or improvement¹⁶;
- 10 (10) the relief of those in need by reason of youth, age, ill-health, disability,
financial hardship or other disadvantage¹⁷;
- 11 (11) the advancement of animal welfare¹⁸;
- 12 (12) the promotion of the efficiency of the armed forces of the Crown, or of the
efficiency of the police, fire and rescue services or ambulance services¹⁹;
- 13 (13) any other purposes recognised as charitable under existing charity law²⁰,
including facilities for recreation or other leisure-time occupation, if the facilities
are provided in the interests of social welfare²¹;
- 14 (14) any purposes that may reasonably be regarded as analogous to, or within
the spirit of, a purpose falling within heads (1)-(13) above²²; and
- 15 (15) any purposes that may reasonably be regarded as analogous to, or within
the spirit of, a purpose which has been recognised under head (14) above²³.

Where any of the terms used in heads (1)-(13) above has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears above²⁴. Accordingly, the cases previously decided on the subject remain relevant except in so far as they are contradicted by any provision in the Charities Act 2006²⁵.

All charitable purposes must fall within one or more of these categories of purposes, though not every institution or trust whose purpose might be brought within one of them is necessarily a charity²⁶, for it must, further, be publicly beneficial and of a public nature²⁷. Many charitable purposes do not fit neatly within a single category²⁸. Where a trust is described merely as being for charitable purposes, and a class of objects to be benefited is defined, the purposes of the trust cannot be taken to be confined to that particular charitable purpose which would render a trust for that class valid as a charity, but rather the purposes must be construed as being all the categories of charitable objects, and the trust must be interpreted in the light of the application of all categories to the class of objects to be benefited²⁹.

Where a purpose is clearly charitable the court will not generally inquire into the efficacy of the activities carried on in pursuance of that purpose³⁰, but such activities may be relevant in so far as they demonstrate whether there is any charitable tendency in a given purpose³¹.

An activity which is charitable in the legal sense is not any the less charitable because it is being carried on without any regular organisation by a person who may discontinue it at any time³². Such an activity would come within the statutory definition of charity as a trust or undertaking³³.

1 *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 580, HL, per Lord Macnaghten; cited in *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631 at 650, [1952] 1 All ER 984 at 992, HL.

2 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 63, [1947] 2 All ER 217 at 232, HL, per Lord Simonds.

3 *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 580, 583, HL, per Lord Macnaghten. As to the popular meaning see *Income Tax Special Purposes Comrs v Pemsel* at 552 per Lord Halsbury LC, at 564 per Lord Bramwell, and at 572 per Lord Herschell; and *Baird's Trustees v Lord Advocate* (1888) 15 R 682, Ct of Sess; *Verge v Somerville* [1924] AC 496 at 502, PC. As to the meaning of 'charity' see PARA 1.

4 *Re Shaw, Public Trustee v Day* [1957] 1 All ER 745 at 752, [1957] 1 WLR 729 at 736, per Harman J.

5 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 41, [1947] 2 All ER 217 at 220, HL, per Lord Wright.

6 Charities Act 2006 ss 2(1)(b), 78(2)(b). This definition does not apply in the Charities Act 2006 where the context otherwise requires: s 78(7). As to the public benefit test see PARA 6.

7 Charities Act 2006 ss 2(1)(a), 78(2)(b). This definition does not apply in the Charities Act 2006 where the context otherwise requires: s 78(7). Any reference in any enactment or document (in whatever terms) to charitable purposes, or institutions having purposes that are charitable under charity law is to be construed in accordance with s 2(1): s 2(6). Section 2(6) applies whether the enactment or document was passed or made before or after the passing of this Act, but does not apply where the context otherwise requires: s 2(7).

8 Charities Act 2006 s 2(2)(a).

9 Charities Act 2006 s 2(2)(b). 'Religion' includes: (1) a religion which involves belief in more than one god; and (2) a religion which does not involve belief in a god: s 2(3)(a).

10 Charities Act 2006 s 2(2)(c).

11 Charities Act 2006 s 2(2)(d). The 'advancement of health' includes the prevention or relief of sickness, disease or human suffering: s 2(3)(b).

12 Charities Act 2006 s 2(2)(e). Section 2(2)(e) includes: (1) rural or urban regeneration; and (2) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities: s 2(3)(c).

13 Charities Act 2006 s 2(2)(f).

14 Charities Act 2006 s 2(2)(g). 'Sport' means sports or games which promote health by involving physical or mental skill or exertion: s 2(3)(d).

15 Charities Act 2006 s 2(2)(h).

16 Charities Act 2006 s 2(2)(i).

17 Charities Act 2006 s 2(2)(j). Section 2(2)(j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph: s 2(3)(e).

18 Charities Act 2006 s 2(2)(k).

19 Charities Act 2006 s 2(2)(l). 'Fire and rescue services' means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act 2004 (see **FIRE SERVICES**): Charities Act 2006 s 2(3)(f).

20 'Existing charity law' means charity law as in force immediately before 1 April 2008 (ie the day on which s 2 came into force): Charities Act 2006 s 2(8); Charities Act 2006 (Commencement No 4, Transitional Provisions and Savings) Order 2008, SI 2008/945, art 2, Sch 1. 'Charity law' means the law relating to charities in England and Wales: Charities Act 2006 s 2(8).

21 Charities Act 2006 ss 2(2)(m), 2(4)(a). The facilities referred to in the text are charitable purposes by virtue of the Recreational Charities Act 1958 s 1: see PARA 52.

22 Charities Act 2006 ss 2(2)(m), 2(4)(b).

23 Charities Act 2006 ss 2(2)(m), 2(4)(c).

24 Charities Act 2006 s 2(5).

25 Previously, charitable purposes derived from the Charitable Uses Act 1601 (43 Eliz 1 c 4 (1601)) (repealed) and were classified into four principal divisions: the relief of poverty; the advancement of education; the advancement of religion; and other purposes beneficial to the community not falling under any of the preceding heads: see *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 583, HL, per Lord Macnaghten. The classification was taken from the argument of Sir Samuel Romilly in *Morice v Bishop of Durham* (1805) 10 Ves 522 at 532 per Lord Eldon LC. See also *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 466, CA, per Lindley LJ.

26 *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 474, CA, per Rigby LJ.

27 See PARAS 6-8.

28 *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669 at 678, [1964] 3 All ER 46 at 51 per Wilberforce J; cf *Trustees of City of Belfast YMCA v Northern Ireland Valuation Comr* [1969] NI 3, CA.

29 *Re Cox, Baker v National Trust Co Ltd* [1955] AC 627, [1955] 2 All ER 550, PC.

30 *Re Shaw's Will Trusts, National Provincial Bank Ltd v National City Bank Ltd* [1952] Ch 163, [1952] 1 All ER 49.

31 See eg *Southwood v A-G* [2000] WTLR 1199, CA.

32 *Re Marchant, Weaver v Royal Society for the Prevention of Cruelty to Animals* (1910) 54 Sol Jo 425; *Re Mann, Hardy v A-G* [1903] 1 Ch 232; *Re Webster, Pearson v Webster* [1912] 1 Ch 106; and see *Re Kerin* (1966) Times, 24 May. Cf the position of unincorporated associations established for charitable purposes, as to which see PARA 30.

33 See the Charities Act 1993 s 97(1); the Charities Act 2006 s 78(5); and PARA 1.

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3. Meaning of 'charity' in Scotland and Northern Ireland.

Previously in Scotland no technical meaning was attached to the words 'charity' and 'charitable'¹, but the construction put upon the words 'charitable purposes', though in some respects wider² and in some narrower³ than in England, was formerly substantially the same⁴. The expressions 'charity' and 'charitable' at any rate were said to include there a wider range of objects than such as are of a merely eleemosynary character⁵. The development of the general law as to charities in Scotland and England has since progressed and, after a period of considerable divergence⁶, the Charities and Trustee Investment (Scotland) Act 2005 introduces a statutory definition of charity broadly similar to the English definition⁷. That Act, in addition, grants the Court of Session various supervisory powers over charities⁸ and makes provision for the establishment and functions of the Office of the Scottish Charity Regulator⁹ and the appellate Scottish Charity Appeals Panel¹⁰.

The Office of the Scottish Charity Regulator maintains a register of charities¹¹. A body may be entered on the register if it meets the statutory 'charity test'¹². A body meets the test if it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere¹³, and its purposes consist only of one or more of the following charitable purposes¹⁴:

- 16 (1) the prevention or relief of poverty¹⁵;
- 17 (2) the advancement of education¹⁶;
- 18 (3) the advancement of religion¹⁷;
- 19 (4) the advancement of health¹⁸;
- 20 (5) the saving of lives¹⁹;
- 21 (6) the advancement of citizenship or community development²⁰;
- 22 (7) the advancement of the arts, heritage, culture or science²¹;
- 23 (8) the advancement of public participation in sport²²;
- 24 (9) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended²³;
- 25 (10) the advancement of human rights, conflict resolution or reconciliation²⁴;
- 26 (11) the promotion of religious or racial harmony²⁵;
- 27 (12) the promotion of equality and diversity²⁶;
- 28 (13) the advancement of environmental protection or improvement²⁷;

- 29 (14) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage²⁸;
- 30 (15) the advancement of animal welfare²⁹; and
- 31 (16) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes³⁰.

An English body which refers to itself as a charity in Scotland will be treated as representing itself as a body entered on the Scottish register of charities³¹ unless it is established under English law, entitled to refer to itself as a 'charity' in England and managed or controlled wholly or mainly outwith Scotland³²; and does not occupy any land or premises in Scotland or carry out any activities in any office, shop or similar premises in Scotland³³. In making such a reference, the body must also refer to being established under English law³⁴.

The Charities Act (Northern Ireland) 2008 replaces the common law meaning of charity in this jurisdiction³⁵ with a statutory definition largely identical to the Scottish definition³⁶. The Act also provides for the establishment and functions of the Charity Commission for Northern Ireland³⁷ and the appellate Charity Tribunal for Northern Ireland³⁸.

1 *Miller v Rowan* (1837) 5 Cl & Fin 99 at 109, HL, per Lord Brougham; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 582, HL, per Lord Macnaghten; *Blair v Duncan* [1902] AC 37 at 43, HL, per Lord Davey. See also *Baird's Trustees v Lord Advocate* (1888) 15 R 682, Ct of Sess, but the words had a sufficiently precise meaning for a gift to trustees to be applied to such charitable purposes as they think fit not to be void for uncertainty by Scots law: see *Crichton v Grierson* (1828) 3 Wils & S 329, HL; *Miller v Rowan* at 109 per Lord Brougham; *Grimond v Grimond* (1904) 6 F 285 at 290, Ct of Sess, per Macdonald JC; *Wordie's Trustees v Wordie* 1915 SC 310, Ct of Sess (affd 1916 SC (HL) 126); *Cameron's Trustees v Mackenzie* 1915 SC 313, Ct of Sess; *Chichester Diocesan Fund and Board of Finance Inc v Simpson* [1944] AC 341 at 351, [1944] 2 All ER 60 at 64, HL, per Lord Macmillan (in Scotland the term 'charitable' had in law a less rigidly technical and artificial meaning than in England).

2 'Charitable and benevolent purposes' were treated as charitable in *Hill v Burns* (1826) 2 Wils & S 80 at 90, HL, per Lord Gifford, approved in *Ewen v Bannerman* (1830) 2 Dow & Cl 74 at 101, HL, per Lord Wynford; see also *Miller v Rowan* (1837) 5 Cl & Fin 99, HL; *Cobb v Cobb's Trustees* (1894) 21 R 638, Ct of Sess. Whether such a gift is charitable in English law (apart from statute) depends on whether it is construed as referring to purposes which are both charitable and benevolent, or to purposes which may be either charitable or benevolent. In the former case the gift is valid (see *Re Sutton, Stone v A-G* (1885) 28 ChD 464; *Re Best, Jarvis v Birmingham Corp'n* [1904] 2 Ch 354), but in the latter not, as not being restricted to charitable objects (see *Williams v Kershaw* (1835) 5 Cl & Fin 111n; *Re Eades, Eades v Eades* [1920] 2 Ch 353). But see also the Charitable Trusts (Validation) Act 1954; and PARAS 90-95.

3 A gift for religious purposes was held to be not necessarily charitable in *Grimond v Grimond* (1904) 6 F 285 at 291, Ct of Sess, per Lord Moncreiff (and on appeal [1905] AC 124, HL); *Re Pardoe, McLaughlin v A-G* [1906] 2 Ch 184 at 192 per Kekewich J; cf *Bannerman's Trustees v Bannerman* 1915 SC 398, Ct of Sess; see also *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 550, HL.

4 *Dundee Magistrates v Morris* (1858) 3 Macq 134 at 154, HL; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 558 HL, per Lord Watson, at 563 per Lord Bramwell, at 573 per Lord Herschell, and at 582 per Lord Macnaghten.

5 *Blair v Duncan* [1902] AC 37 at 43, HL, per Lord Davey. As to eleemosynary corporations see PARA 224.

6 *IRC v City of Glasgow Police Athletic Association* 1952 SC 102, Ct of Sess; and see observations on appeal [1953] AC 380, [1953] 1 All ER 747, HL.

7 See the Charities and Trustee Investment (Scotland) Act 2005 s 7. As to the English definition see PARAS 1-2.

8 See the Charities and Trustee Investment (Scotland) Act 2005 ss 34-37.

9 See the Charities and Trustee Investment (Scotland) Act 2005 s 1, Sch 1.

10 See the Charities and Trustee Investment (Scotland) Act 2005 s 75, Sch 2.

11 See the Charities and Trustee Investment (Scotland) Act 2005 s 3.

- 12 See the Charities and Trustee Investment (Scotland) Act 2005 s 5. For guidance on the charity test see s 9.
- 13 See the Charities and Trustee Investment (Scotland) Act 2005 ss 7(1)(b), 8.
- 14 See the Charities and Trustee Investment (Scotland) Act 2005 s 7(1)(a).
- 15 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(a).
- 16 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(b).
- 17 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(c).
- 18 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(d).
- 19 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(e).
- 20 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(f).
- 21 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(g).
- 22 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(h).
- 23 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(i).
- 24 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(j).
- 25 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(k).
- 26 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(l).
- 27 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(m).
- 28 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(n).
- 29 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(o).
- 30 Charities and Trustee Investment (Scotland) Act 2005 s 7(2)(p).
- 31 See the Charities and Trustee Investment (Scotland) Act 2005 s 13.
- 32 See the Charities and Trustee Investment (Scotland) Act 2005 s 14(a).
- 33 See the Charities and Trustee Investment (Scotland) Act 2005 s 14(b).
- 34 See the Charities and Trustee Investment (Scotland) Act 2005 s 14(c).
- 35 Previously in Ireland the legal and technical meaning of 'charity' was precisely the same as at common law in England, except perhaps in regard to masses, for although the Charitable Uses Act 1601 (43 Eliz 1 c 4 (1601)) did not extend to that country, an Irish statute of Charles I (10 Car 1 (1634)) contained a closely similar list of purposes which were regarded as charitable in Ireland: see *Incorporated Society in Dublin v Richards* (1841) 1 Dr & War 258 at 324 per Lord St Leonards; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 544-546, HL, per Lord Halsbury.
- 36 See the Charities Act (Northern Ireland) 2008 Pt I (ss 1-5).
- 37 See the Charities Act (Northern Ireland) 2008 Pt II (ss 6-11), Sch 1.
- 38 See the Charities Act (Northern Ireland) 2008 Pt III (ss 12-15), Sch 2-4.

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4. Purposes must be exclusively charitable.

To be a charity in law, a trust or institution must be established for purposes which are exclusively charitable¹; a charitable trust can be enforced by the court at the suit of the Attorney General, for the court knows what are charitable purposes and can apply the trust property accordingly, but a trust for benevolent purposes cannot be so enforced and is therefore void for uncertainty². However, a distinction must be drawn between: (1) the designated purposes of the trust; (2) the designated means of carrying out those purposes; and (3) the consequences of carrying them out. Trust purposes of an otherwise charitable nature do not lose that nature merely because the trustees, by way of furtherance of those purposes, have incidental powers to carry on activities which are not themselves charitable. The distinction is between: (a) those non-charitable activities which are merely subsidiary or incidental to a charitable purpose; and (b) those non-charitable activities so authorised which in themselves form part of the trust purpose. In the latter but not the former case, the reference to non-charitable activities will deprive the trust of its charitable status³.

1 See the Charities Act 2008 s 1(1)(a); the Charities Act 1993 s 97(1) (definition amended by the Charities Act 2006 Sch 8 paras 96, 174(a)); and PARA 2. As to the meaning of 'charitable purposes' see PARA 2. If it is established partly for charitable and partly for non-charitable purposes, it may in some circumstances be validated by the Charitable Trusts (Validation) Act 1954: see PARAS 97-102. In determining whether purposes are charitable it may be necessary to refer not only to the body's constitution but also, in cases of doubt and ambiguity, to extrinsic evidence, including its activities: *Southwood v A-G* [1998] 40 LS Gaz R 37, Times, 26 October; affd [2000] WTLR 1199, CA; *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73 at 91 per Sachs LJ and at 99 per Buckley LJ; *IRC v Oldham Training and Enterprise Council* [1996] STC 1218 at 1234-1235 per Lightman J. See also *Application for the Registration of the Ethnic-English Trust and the Ironside Community Trust*, Decision of the Charity Commission, 28 June 2007. As to decisions of the Charity Commission see PARA 542.

2 *Chichester Diocesan Fund and Board of Finance Inc v Simpson* [1944] AC 341 at 371, [1944] 2 All ER 60 at 74, HL, per Lord Simonds; the same case in the Court of Appeal, sub nom *Re Diplock, Wintle v Diplock* [1941] Ch 253 at 259, [1941] 1 All ER 193 at 199, per Sir Wilfrid Greene MR; *Morice v Bishop of Durham* (1804) 9 Ves 399 at 404 per Sir William Gaunt MR (on appeal (1805) 10 Ves 522 at 539 per Lord Eldon LC); *IRC v Broadway Cottages Trust Ltd* [1955] Ch 20 at 29, [1954] 3 All ER 120 at 124, CA, per Jenkins LJ; and see PARA 65.

3 *McGovern v A-G* [1982] Ch 321, [1981] 3 All ER 493. See also *Re Coxen, McCallum v Coxen* [1948] Ch 747, [1948] 2 All ER 492; *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73 at 84, [1971] 3 All ER 1029 at 1033, CA, per Russell LJ; *A-G v Ross* [1985] 3 All ER 334, [1986] 1 WLR 252.

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5. Trading by or on behalf of charities.

A charity may carry on trade provided it falls into one of the following categories: (1) primary purpose trading; (2) ancillary trading; and (3) non-primary purpose trading that does not involve significant risk to the resources of the charity¹. Primary purpose trading is trading which contributes directly to one or more of the objects of a charity as set out in its governing document² - for example the provision of educational services by a charitable school or college in return for course fees or the sale of goods manufactured by disabled people who are beneficiaries of a charity for the disabled³. Ancillary trading is trading which contributes indirectly to the successful furtherance of the purposes of the charity⁴, such as the sale of food and drink in a restaurant or bar by a theatre charity to members of an audience⁵. Non-primary purpose trading is trading intended to raise funds for the charity⁶. The significant risk to be avoided as regards non-primary purpose trading is where the turnover is insufficient to meet

the costs of carrying on the trade and the difference has to be financed out of the assets of the charity⁷. In practice it may not be easy to draw the line between a charity which is merely raising funds and furthering its activities by trading and what is in substance a trading institution wearing a charitable mantle⁸.

A charity may establish a non-charitable trading subsidiary company if it is within the investment powers of the charity and can be justified as an appropriate investment of the charity's resources⁹. Such a subsidiary must be used in respect of any trading where there would be a significant risk to the assets of the charity if it were to carry on non-primary purpose trading itself¹⁰.

1 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para C2. As to the Charity Commission's publications see PARA 542.

2 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para C6.

3 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para C6.

4 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para C7.

5 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para C7.

6 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para C8.

7 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para C8.

8 See the *Report of the Charity Commissioners for England and Wales for 1980* (HC Paper (1980-81) no 332) para 8.

9 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para D8.

10 See *CC35: Trustees, Trading and Tax* (Charity Commission, April 2007) para D1.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/6. Public benefit essential.

6. Public benefit essential.

The Charities Act 2006 provides that a purpose is not charitable unless it is for the 'public benefit' and the element of public benefit is thus a necessary condition of legal charity¹. This principle was previously established at common law² and for the purposes of the Charities Act 2006 any reference to public benefit is a reference to that term as it is understood at common law³. There are two distinct elements in this requirement: (1) the purpose must have an identifiable benefit⁴; and (2) the benefit of the purpose must be available to a sufficient section of the public⁵. The line of distinction between purposes of a public and a private nature is fine and practically incapable of definition⁶.

The Charity Commission has a statutory objective to promote awareness and understanding of the operation of the public benefit requirement⁷ and must issue guidance in pursuance of that objective⁸. Charity trustees must have regard to it when exercising any powers or duties to which the guidance is relevant⁹.

1 See the Charities Act 2006 s 2(1)(b); and PARA 2.

2 See *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 305, [1951] 1 All ER 31 at 33, HL, per Lord Simonds; *Jones v Williams* (1767) Amb 651 (where 'charity' is defined as a gift to a general public use which extends to the poor as well as to the rich); *Ommanney v Butcher* (1823) Turn & R 260 at 273 per Plumer

MR; *Goodman v Saltash Corpn* (1882) 7 App Cas 633 at 650, HL, per Earl Cairns; *Re Christchurch Inclosure Act* (1888) 38 ChD 520 at 532, CA, per Lindley LJ; affd sub nom *A-G v Meyrick* [1893] AC 1, HL. As to the meaning of 'private charity' see PARA 59.

3 See the Charities Act 2006 s 3(3).

4 See PARA 7.

5 See PARA 8.

6 *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90 at 96 per Eve J; *A-G v Pearce* (1740) 2 Atk 87; *Hall v Derby Borough Urban Sanitary Authority* (1885) 16 QBD 163, DC; *Shaw v Halifax Corpn* [1915] 2 KB 170 at 182, CA, per Kennedy LJ.

7 See the Charities Act 1993 s 1B; and PARA 539.

8 See the Charities Act 2006 s 4(1)-(2). The Commission may from time to time revise any such guidance (s 4(3)) and must carry out such public and other consultation as it considers appropriate before issuing any such guidance or, unless it considers that it is unnecessary to do so, before revising any such guidance (s 4(4)). Any consultation initiated by the Charity Commissioners for England and Wales before 1 April 2008 (ie the day on which s 4 came into force (see Charities Act 2006 (Commencement No 4, Transitional Provisions and Savings) Order 2008, SI 2008/945, art 2 Sch 1) is effective for these purposes as if it had been initiated by the Commission on or after that day: Charities Act 2006 s 75(3), Sch 10 para 1. The Commission must publish any guidance issued or revised under this section in such manner as it considers appropriate: s 4(5). As to the Charity Commission see PARAS 538-572. As to the Charity Commissioners see PARA 538. As to such guidance see *Charities and Public Benefit* (Charity Commission, January 2008). As to the Charity Commission's publications see PARA 542.

9 Charities Act 2006 s 4(6). See also *Charities and Public Benefit* (Charity Commission, January 2008) para C4.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/7. Proof of public benefit.

7. Proof of public benefit.

The question whether a purpose will or may be operative for the public benefit is a question to be answered by the court by forming an opinion on the evidence before it¹, having strict regard to the conditions of the gift².

It is not to be presumed that a purpose of a particular description is for the public benefit³. Despite this it is likely that the old common law position that a purpose may be so obviously beneficial to the community that to call evidence on the question would be absurd⁴ still stands; for example, where there is an obvious educational merit in a particular purpose the benefit will usually be clear⁵. If the purpose of the gift is held to be beneficial to the public, it is not relevant for the court to inquire whether one means or another of achieving that purpose is most effective⁶. However, if the element of public benefit is incapable of proof one way or the other, the court will not recognise the trust as being of a charitable nature⁷.

A donor's opinion with regard to whether the gift will be beneficial to the public⁸, even when based on religious belief⁹, and his motive¹⁰, are both immaterial. The fact that a donor expressly refers to his 'general charitable intention' cannot impose on a gift a general charitable intention or make it charitable if, on the face of it, it has only a particular intention which is not charitable¹¹. It is for the court to consider each case upon its own special circumstances¹².

As circumstances differ from age to age, a purpose regarded in one age as for the public benefit and charitable may in another be regarded differently, so that a gift in the will of a testator dying in 1700 might be held valid upon the evidence then before the court but, upon different evidence, held invalid if he died in 1900¹³. The converse may also be possible¹⁴. This is

not to say that a charitable trust, when it has once been established, can ever fail: a charity once established in perpetuity does not die, though its nature may be changed¹⁵.

1 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 44, [1947] 2 All ER 217 at 219, HL, per Lord Wright (approving *Re Hummeltenberg*, *Beatty v London Spiritualistic Alliance Ltd* [1923] 1 Ch 237, and overruling *Re Foveaux*, *Cross v London Anti-Vivisection Society* [1895] 2 Ch 501 at 507 per Chitty J); applied in *Re Moss*, *Hobrough v Harvey* [1949] 1 All ER 495. See also *Re Grove-Grady*, *Plowden v Lawrence* [1929] 1 Ch 557 at 572, CA, per Lord Hanworth MR, and at 583, 588, per Russell LJ; compromised on appeal sub nom *A-G v Plowden* [1931] WN 89, HL; *Application for Registration of Living in Radiance*, Decision of the Charity Commissioners, 25 August 2005, at 6.2. As to decisions of the Charities Commission see PARA 542.

2 *Re Pinion*, *Westminster Bank Ltd v Pinion* [1965] Ch 85, [1964] 1 All ER 890, CA; revsg on this point Wilberforce J [1965] Ch 85, [1963] 2 All ER 1049.

3 Charities Act 2006 s 3(2). The full significance of this provision is unclear. It is taken to be a reference to the presumption under the old law that the relief of poverty, the advancement of education and the advancement of religion (see PARAS 14-34) satisfied the requirement of benefit to a sufficient section of the community unless the contrary appeared: see PARA 8 note 8. However, the Charity Commission's position is that the provision also demands that all purposes, including the relief of poverty, the advancement of education and the advancement of religion, now require proof of public benefit in order to be charitable purposes: see *the Advancement of Education for the Public Benefit* (Charity Commission, December 2008), para D1. It is submitted that the Commission's position is incorrect, in so far as the courts have previously held any given purpose as charitable without reliance on such a presumption: see further P Luxton *A Three-Part Invention: Public Benefit under the Charity Commission* Charity Law and Practice Review vol 11 Issue 1 (2009) p 19.

4 *Re Shaw's Will Trusts*, *National Provincial Bank Ltd v National City Bank Ltd* [1952] Ch 163, [1952] 1 All ER 49; and see PARA 22.

5 *The Advancement of Education for the Public Benefit* (Charity Commission, December 2008), para D2.

6 *Re Shaw's Will Trusts*, *National Provincial Bank Ltd v National City Bank Ltd* [1952] Ch 163, [1952] 1 All ER 49.

7 *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL; *McGovern v A-G* [1982] Ch 321, [1981] 3 All ER 493.

8 See the cases cited in note 1.

9 *Gilmour v Coats* [1949] AC 426 at 456-457, [1949] 1 All ER 848 at 861, HL, per Lord Reid; *Keren Kayemeth Le Jisroel Ltd v IRC* [1932] AC 650, HL.

10 *Hoare v Osborne* (1866) LR 1 Eq 585 at 588 per Kindersley V-C; *Re Delany*, *Conoley v Quick* [1902] 2 Ch 642 at 649 per Farwell J; *Re King*, *Kerr v Bradley* [1923] 1 Ch 243 at 245 per Romer J.

11 *Re Sanders' Will Trusts*, *Public Trustee v McLaren* [1954] Ch 265, [1954] 1 All ER 667 (appeal settled (1954) Times, 22 July, CA); and see PARA 90.

12 *Re Foveaux*, *Cross v London Anti-Vivisection Society* [1895] 2 Ch 501 at 504 per Chitty J, cited with approval by Lord Simonds in *National Anti-Vivisection Society v IRC* [1948] AC 31 at 67, [1947] 2 All ER 217 at 234, HL.

13 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 74, [1947] 2 All ER 217 at 238, HL, per Lord Simonds.

14 *Gilmour v Coats* [1949] AC 426 at 443, [1949] 1 All ER 848 at 853, HL, per Lord Simonds.

15 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 74, [1947] 2 All ER 217 at 238, HL, per Lord Simonds. However, a charitable trust may be established for a specific, strictly limited purpose (see *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA) or subject to a gift over on the happening of a certain event, eg the failure of the original charitable purpose (see *Re Cooper's Conveyance Trusts*, *Credson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096); such trusts are not necessarily established in perpetuity and could be said to die, or at least to be potentially mortal; see also PARA 139. The failure of a charitable trust's original purpose in the absence of a gift over will trigger the court's cy-près jurisdiction; see PARA 177 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/8. Benefit to sufficient section of community.

8. Benefit to sufficient section of community.

To satisfy the test of public benefit¹, a purpose must benefit the community, or an appreciably important class of the community², which must be sufficiently defined³ and identifiable by some quality of a public nature⁴, but may be restricted within narrow limits⁵. It may be a community abroad⁶.

The question what is a sufficient section of the public must be considered in the light of the particular purpose, for they are interdependent; the argument that what is a sufficient section to support a valid trust in one category must be sufficient to support a valid trust in any other category cannot be accepted⁷. It is not to be presumed that a purpose of a particular description is for the public benefit⁸. In ascertaining whether a purpose is public or private, the salient point to be considered is whether the class to be benefited, or from which the beneficiaries are to be selected, constitutes a substantial body of the public⁹.

The beneficiaries must not be numerically negligible¹⁰, and must not be ascertained or determined by their connection with a private individual or private individuals or with a company or other employer¹¹; nor may they be merely particular private individuals pointed out by the donor or a fluctuating class of private individuals¹². A class of trusts for the relief of poverty, known as the 'poor relations cases', forms an exception to this principle¹³. The fact that funds have been publicly subscribed for a purpose is not a test of whether the purpose is of a public nature, though it may afford some indication¹⁴.

An orphanage for the children of deceased railway employees has been held to be a public charity¹⁵; a 'seamen's mission' for the benefit of seamen in port in the Port of London and the London dock areas is charitable¹⁶, and a statutory body established to promote and improve the standard of training within the whole of one industry in England, Scotland and Wales has been held to be established for exclusively charitable purposes¹⁷. But a trust for all members of a trade union which was open to all members of the printing industry, but to which not all members of the industry in fact belonged, was held not to be charitable¹⁸, nor was a society for the relief of the sickness of its own members, who numbered over 400,000, charitable¹⁹.

A trust to provide for the education of children of employees or former employees of a group of companies is private²⁰; a contributory fund for the relief of air raid victims among the contributors who were employees of a particular company is private²¹; similarly a trust to contribute to the holiday expenses of the workpeople employed in a certain department of a company's business has been held to be a trust for private individuals, and so not charitable²². A gift on trust for the children and remoter issue of Presbyterians living at a certain date and descended from Presbyterian settlers in the colony of New South Wales hailing from or born in the north of Ireland was held not to be for the benefit of a section of the community, in the sense in which these words have been interpreted in the authorities²³. A gift for the education of descendants of named persons, irrespective of their means, is private²⁴. Pupils at a particular school may be a sufficient section of the public²⁵. A gift to a named community house, construed as a gift for its purposes, was held charitable, the necessary element of public benefit consisting in the assistance rendered by the community house to members of the public in need²⁶. A gift to a class which would be held to be private on this principle may nevertheless be a valid charitable gift if the purposes of the gift are restricted to the relief of poverty²⁷, and a bequest for the relief of such poor persons as the testator's trustees may choose is charitable²⁸.

On the other hand, where the choice is to be made from a number of named individuals²⁹, or where the class of beneficiaries is so restricted that the gift is, in effect, one to particular individuals³⁰, the gift may be held to be not in the nature of a charitable gift at all, but rather a direct beneficial gift to the individuals in question or some of them³¹.

1 See PARAS 6-7.

2 *Verge v Somerville* [1924] AC 496 at 499, PC; *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 305, [1951] 1 All ER 31 at 33, HL, per Lord Simonds.

3 *Keren Kayemeth Le Jisroel Ltd v IRC* [1932] AC 650, HL; *Williams' Trustees v IRC* [1947] AC 447 at 457, [1947] 1 All ER 513 at 519, HL, per Lord Simonds; *Northern Ireland Valuation Comr v Lurgan Borough Council* [1968] NI 104 at 153-156, CA, per McVeigh LJ.

4 *Keren Kayemeth Le Jisroel Ltd v IRC* [1932] AC 650, HL; *Williams' Trustees v IRC* [1947] AC 447, [1947] 1 All ER 513, HL; *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA; *Re Hobourn Aero Components Ltd's Air Raid Distress Fund, Ryan v Forrest* [1946] Ch 194, [1946] 1 All ER 501, CA; see also *Dingle v Turner* [1972] AC 601 at 623, [1972] 1 All ER 878 at 889, HL, per Lord Cross of Chelsea; *Charter v Race Relations Board* [1973] AC 868 at 907, [1973] 1 All ER 512 at 533, HL, per Lord Cross of Chelsea.

5 See the cases cited in notes 15-25; and PARA 59.

6 As to foreign charitable purposes see PARAS 57-58.

7 *IRC v Baddeley* [1955] AC 572 at 615, [1955] 1 All ER 525 at 549, HL, per Lord Somervell of Harrow; *Re Dunlop, Northern Bank Executor and Trustee Co Ltd v A-G for Northern Ireland* [1984] NI 408; cf *Dingle v Turner* [1972] AC 601 at 624, [1972] 1 All ER 878 at 889, HL, per Lord Cross of Chelsea.

8 See the Charities Act 2006 s 3(2); and PARA 7. Previously there was a presumption that the relief of poverty, the advancement of education and the advancement of religion (see PARAS 14-34) satisfied the requirement unless the contrary appeared: *National Anti-Vivisection Society v IRC* [1948] AC 31 at 42, [1947] 2 All ER 217 at 220, HL, per Lord Wright. In the same case Lord Simonds, at 65, 233, put it rather more widely, saying that the assumption should be made when a purpose appears broadly to fall within one of the familiar categories of charity, adding that the court will not be astute in such a case to defeat upon doubtful evidence the avowed benevolent intention of a donor. See also *Re Watson, Hobbs v Smith* [1973] 3 All ER 678, [1973] 1 WLR 1472; *Re Hetherington* [1990] Ch 1, sub nom *Re Hetherington, Gibbs v McDonnell* [1989] 2 All ER 129. However, the gift failed for this reason in *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL. In the absence of further judicial consideration decisions taken on this matter before the Charities Act 2006 s 3(2) came into force must tentatively remain good law.

9 *Shaw v Halifax Corp'n* [1915] 2 KB 170 at 181, CA, per Buckley LJ; *Verge v Somerville* [1924] AC 496 at 499, PC; *A-G v Pearce* (1740) 2 Atk 87; *Hall v Derby Borough Urban Sanitary Authority* (1885) 16 QBD 163, DC.

10 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 306, [1951] 1 All ER 31 at 34, HL, per Lord Simonds; but see *Cross v Lloyd-Greame* (1909) 102 LT 163.

11 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, [1951] 1 All ER 31, HL; *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA; *Caffoor v Income Tax Comr, Colombo* [1961] AC 584, [1961] 2 All ER 436, PC; *Davies v Perpetual Trustee Co Ltd* [1959] AC 439, [1959] 2 All ER 128, PC; and see *IRC v Educational Grants Association Ltd* [1967] Ch 993 at 1009, [1967] 2 All ER 893 at 896, CA, per Lord Denning MR.

12 *A-G v Pearce* (1740) 2 Atk 87; *A-G v Comber* (1824) 2 Sim & St 93; *Goodman v Saltash Corp'n* (1882) 7 App Cas 633 at 650, HL, per Earl Cairns; *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90. See also *Charter v Race Relations Board* [1973] AC 868, [1973] 1 All ER 512, HL; and the cases cited in notes 29-30. As to the difficulty of distinguishing a section of the public from a fluctuating class of individuals cf *Dingle v Turner* [1972] AC 601 at 624, [1972] 1 All ER 878 at 889, HL, per Lord Cross of Chelsea.

13 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 305, 308, [1951] 1 All ER 31 at 33, 35, HL, per Lord Simonds. These cases 'stick out like a sore thumb from the general rule': *IRC v Educational Grants Association Ltd* [1967] Ch 993 at 1011, [1967] 2 All ER 893 at 898, CA, per Harman LJ; 'a hallowed, if illogical, exception': *Re Scarisbrick, Cockshott v Public Trustee* [1951] Ch 622 at 639, [1951] 1 All ER 822 at 830, CA, per Sir Raymond Evershed MR. See also *Dingle v Turner* [1972] AC 601, [1972] 1 All ER 878, HL; and see PARA 19. The Charity Commission's position is that the poor relations cases continue to be good law under the Charities Act 2006: see *The Prevention or Relief of Poverty for the Public Benefit* (Charity Commission, December 2008) para E3. As to the Charity Commission's publications see PARA 542.

14 *Shaw v Halifax Corpn* [1915] 2 KB 170, CA; *Hall v Derby Borough Urban Sanitary Authority* (1885) 16 QBD 163, DC (these were decisions on whether a particular foundation was a 'public charity' within the meaning of local Acts); see also *Re Hobourn Aero Components Ltd's Air Raid Distress Fund, Ryan v Forrest* [1946] Ch 194, [1946] 1 All ER 501, CA; *Re Forster, Gellatly v Palmer* [1939] Ch 22, [1938] 3 All ER 767. The funds may be levied by taxation (*A-G v Brown* (1818) 1 Swan 265; *A-G v Dublin Corpn* (1827) 1 Bli NS 312 at 334, 336, HL; *A-G v Eastlake* (1853) 11 Hare 205; *Re St Bride's, Fleet Street, Church or Parish Estate* (1877) 35 ChD 147n; *Re St Botolph Without Bishopsgate Parish Estates* (1887) 35 ChD 142 at 150-151, per North J; see also *A-G v Shrewsbury Corpn* (1843) 6 Beav 220), or given by the Crown (*A-G v Blizzard* (1855) 21 Beav 233; contra, *A-G v Galway Corpn* (1829) 1 Mol 95). The trust property may be purchased under statutory authority for public purposes: *Re St Pancras Burial Ground* (1866) LR 3 Eq 173.

15 *Hall v Derby Borough Urban Sanitary Authority* (1885) 16 QBD 163: see note 14.

16 *Finch v Poplar Borough Council* (1967) 66 LGR 324.

17 *Construction Industry Training Board v A-G* [1971] 3 All ER 449, [1971] 1 WLR 1303; affd without dealing with this point [1973] Ch 173, [1972] 2 All ER 1339, CA.

18 *Re Mead's Trust Deed, Briginshaw v National Society of Operative Printers and Assistants* [1961] 2 All ER 836, [1961] 1 WLR 1244.

19 *Waterson v Hendon Borough Council* [1959] 2 All ER 760, [1959] 1 WLR 985; but see *Re Forster, Gellatly v Palmer* [1939] Ch 22, [1938] 3 All ER 767.

20 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, [1951] 1 All ER 31, HL (where the number of employees exceeded 110,000); disapproving *Re Rayner, Cloutman v Regnart* (1920) 89 LJCh 369; and approving *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA; and *Re Hobourn Aero Components Ltd's Air Raid Distress Fund, Ryan v Forrest* [1946] Ch 194, [1946] 1 All ER 501, CA; *Re Cox, Baker v National Trust Co Ltd* [1955] AC 627, [1955] 2 All ER 550, PC; and *IRC v Educational Grants Association Ltd* [1967] Ch 993, [1967] 2 All ER 893, CA.

21 *Re Hobourn Aero Components Ltd's Air Raid Distress Fund, Ryan v Forrest* [1946] Ch 194, [1946] 1 All ER 501, CA.

22 *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90 (where the employees concerned numbered between 400 and 500); approved in *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA.

23 *Davies v Perpetual Trustee Co Ltd* [1959] AC 439, [1959] 2 All ER 128, PC; cf *Re Tree, Idle v Tree* [1945] Ch 325, [1945] 2 All ER 65.

24 *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA.

25 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 306, [1951] 1 All ER 31 at 34, HL, per Lord Simonds, and at 309, 36 per Lord Normand; *Perpetual Trustees Co Ltd v Ferguson* (1951) 51 SRNSW 256, NSW SC, though see, as to the particular schools in question in that case, *Thompson v Federal Taxation Comr* (1959) 102 CLR 315, Aust HC.

26 *Re Banfield, Lloyds Bank Ltd v Smith* [1968] 2 All ER 276, [1968] 1 WLR 846.

27 See PARA 19.

28 *A-G v Pearce* (1740) 2 Atk 87; and see PARA 123.

29 *Liley v Hey* (1842) 1 Hare 580. As to gifts for the benefit of individuals see PARA 60.

30 *A-G v Hughes* (1689) 2 Vern 105, revsg sub nom *A-G v Baxter* (1684) 1 Vern 248, explained in *Moggridge v Thackwell* (1803) 7 Ves 36 at 76 per Lord Eldon LC; affd (1807) 13 Ves 416, HL; *Thomas v Howell* (1874) LR 18 Eq 198.

31 See the cases cited in note 30. If the gifts had been charitable, they would have failed under the law of mortmain (now repealed: see PARA 83).

9. Preference given to limited class.

Where a trust is held to be primarily for the benefit of a sufficient section of the community, there is authority to the effect that it is not invalidated by a direction to give preference, in applying part of the available income, to a smaller class which would not in itself be a sufficient section of the community¹, such as the employees of a particular company² or the descendants of the founder of the charity³. The authorities upon which these propositions are based are weakened by the abolition of the presumption of public benefit for purposes which advance education under which they were decided⁴ and the Charity Commission's position is that a fund that gives preference to the children from a particular family, however large a group, would not benefit a section of the public⁵.

In any case, where the preferential direction is mandatory, extends to the whole of the income and is in favour of a class which will almost certainly always exhaust the whole income, the absolute priority of the preferential class prevents the trust from being for the benefit of a sufficient section of the community⁶.

1 *Re Koettgen's Will Trusts, Westminster Bank Ltd v Family Welfare Association Trustees Ltd* [1954] Ch 252, [1954] 1 All ER 581.

2 *Re Koettgen's Will Trusts, Westminster Bank Ltd v Family Welfare Association Trustees Ltd* [1954] Ch 252, [1954] 1 All ER 581.

3 The 'Founder's Kin' cases, explained in *Caffoor v Income Tax Comr, Colombo* [1961] AC 584 at 602, [1961] 2 All ER 436 at 444, PC: they should probably be regarded as belonging more to history than to doctrine.

4 See PARA 8 note 8.

5 See *The Advancement of Education for the Public Benefit* (Charity Commission, December 2008) para E3. As to the Charity Commission's publications see PARA 542. As to the Charity Commission see PARAS 538-572.

6 *Caffoor v Income Tax Comr, Colombo* [1961] AC 584, [1961] 2 All ER 436, PC (doubting *Re Koettgen's Will Trusts, Westminster Bank Ltd v Family Welfare Association Trustees Ltd* [1954] Ch 252, [1954] 1 All ER 581). See *Re Martin* (1977) 121 Sol Jo 828 (right of residence to testator's daughters in old people's home).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/10. Benefit to rich as well as poor.

10. Benefit to rich as well as poor.

An object may be charitable in the legal sense notwithstanding that it will benefit the rich as well as the poor¹, but it is difficult to believe that a trust would be held charitable if the poor were excluded from its benefit². The Charity Commission's position is that, whatever restrictions there are on public benefit, charities must in all cases ensure that people in poverty are not excluded from the opportunity to benefit from each of their aims³.

1 *Jones v Williams* (1767) Amb 651; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 583, HL, per Lord Macnaghten; *Verge v Somerville* [1924] AC 496 at 499, PC; see also *Re Hillier, Dauncey v Finch and A-G* [1944] 1 All ER 480.

2 *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 464, CA, per Lindley LJ; *A-G v Duke of Northumberland* (1877) 7 ChD 745 at 752 per Jessel MR; and see *Re Resch's Will Trusts, Le Cras v Perpetual Trustee Co Ltd* [1969] 1 AC 514 at 542, sub nom *Le Cras v Perpetual Trustee Co Ltd* [1967] 3 All ER 915 at 923, PC. See *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159, [1983] 1 All ER 288, where it was said

that it is not necessarily fatal to charitable status that the benefit cannot be withdrawn if a beneficiary ceases to qualify.

3 *Charities and Public Benefit* (Charity Commission, January 2008) para F11. See also *Review Decision made on the Application for Registration of Odstock Private Care Ltd*, Charity Commission Review Decision, 25 September 2007 (relief of sickness not charitable where service charges prevented those in poverty from benefiting either directly or indirectly). As to the Charity Commission's publications see PARA 542.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/11. Charity trading or charging for services.

11. Charity trading or charging for services.

The provision of benefits to the public may be charitable notwithstanding that a charge is made¹, or that a contribution is required from beneficiaries². An institution may carry on a trade or business in order to achieve its purposes and still be charitable, so long as no part of any profit made can be distributed to members or applied otherwise than for charitable purposes³. It is not necessary, for it to be charitable, that a gift for the provision of homes for the aged should provide for all the needs of the beneficiaries⁴, and the provision of such accommodation may be charitable even if it is to be let to the beneficiaries at economic rents⁵. Where a charity charges high fees that many people could not afford, the Charity Commission's position is that the trustees must ensure that: (1) the benefits are not unreasonably restricted by a person's ability to pay; and (2) people in poverty are not excluded from the opportunity to benefit⁶.

1 *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corp* [1968] AC 138, [1967] 3 All ER 215, HL; *Brighton College v Marriott* [1926] AC 192, HL; *IRC v Falkirk Temperance Cafe Trust* 1927 SC 261; *The Abbey, Malvern Wells, Ltd v Minister of Local Government and Planning* [1951] Ch 728, [1951] 2 All ER 154; *Re Resch's Will Trusts*, *Le Cras v Perpetual Trustee Co Ltd* [1969] 1 AC 514, sub nom *Le Cras v Perpetual Trustee Co Ltd* [1967] 3 All ER 915, PC; *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA; *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159, [1983] 1 All ER 288.

2 *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687; *Re Clarke, Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407; *Re Chaplin, Neame v A-G* [1933] Ch 115; *IRC v Peeblesshire Nursing Association* 1927 SC 215, Ct of Sess; *Re Cottam's Will Trusts*, *Midland Bank Executor and Trustee Co Ltd v Huddersfield Corp* [1955] 3 All ER 704, [1955] 1 WLR 1299.

3 *Brighton College v Marriott* [1926] AC 192, HL; *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73 at 86, 90, [1971] 3 All ER 1029 at 1034, CA per Russell LJ, and at 1038 per Sachs LJ. See PARA 5.

4 *Re Payling's Will Trusts*, *Armstrong v Payling* [1969] 3 All ER 698, [1969] 1 WLR 1595; cf *Re Monk, Giffen v Wedd* [1927] 2 Ch 197, CA.

5 *Re Cottam's Will Trusts*, *Midland Bank Executor and Trustee Co Ltd v Huddersfield Corp* [1955] 3 All ER 704, [1955] 1 WLR 1299; *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corp* [1968] AC 138 at 156, [1967] 3 All ER 215 at 224, HL, per Lord Wilberforce; though see also *IRC v Peeblesshire Nursing Association* 1927 SC 215 at 222, Ct of Sess per Lord Sands (provision charitable if at less than cost price).

6 See the *Public Benefit and Fee-Charging* (Charity Commission, December 2008) para C1; and PARA 10. As to the Charity Commission's publications see PARA 542.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/12. Racial discrimination.

12. Racial discrimination.

A provision which is contained in a charitable instrument¹ (whenever that instrument took or takes effect) and which provides for conferring benefits on persons of a class defined by reference to colour now takes effect for all purposes as if it provided for conferring the like benefits²: (1) on persons of the class which results if the restriction by reference to colour is disregarded³; or (2) where the original class is defined by reference to colour only, it takes effect as if it conferred benefits on persons generally⁴.

The provisions which make it unlawful to discriminate against a person on the ground of colour, race⁵, nationality, or ethnic⁶ or national origins in the employment field, education, planning, public authorities and the provision of goods, facilities, services or premises⁷ do not affect any provision which is contained in a charitable instrument (whenever that instrument took or takes effect) and which provides for conferring benefits on persons of a class defined otherwise than by reference to colour⁸, nor do they render unlawful any act⁹ which is done in order to give effect to such a provision¹⁰, except where that act is unlawful, on grounds of race or ethnic or national origins, in relation to applicants, employees¹¹ or contract workers¹².

1 For these purposes, 'charitable instrument' means an enactment or other instrument passed or made for charitable purposes, or an enactment or other instrument so far as it relates to charitable purposes: Race Relations Act 1976 s 34(4). For these purposes, 'charitable purposes' means purposes which are exclusively charitable according to the law of England and Wales: s 34(4). As to charitable purposes see PARA 2.

2 Race Relations Act 1976 s 34(1). Nothing in this provision alters the effect of any provision as regards any time before 13 June 1977: see s 34(1).

3 Race Relations Act 1976 s 34(1)(a); and see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 481. For an application of s 34(1) see *Re Harding, Gibbs v Harding* [2007] EWHC 3 (Ch), [2008] Ch 235, [2007] 1 All ER 747 (where the deceased's intended gift to the black community of Hackney, Haringey, Islington and Tower Hamlets was held to be a valid charitable gift but without the reference to colour).

4 Race Relations Act 1976 s 34(1)(b); and see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 481.

5 Gipsies have been held to be a racial group: *Commission for Racial Equality v Dutton* [1989] QB 783, [1989] 1 All ER 306, CA.

6 For a group to constitute an ethnic group it must regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Of these, two are essential, ie (1) a long shared history; and (2) a cultural tradition of its own. Other common but not essential characteristics include: (3) a common geographical origin; (4) a common language; (5) a common literature; (6) a common religion; and (7) being a minority: *Mandla v Dowell Lee* [1983] 2 AC 548, [1983] 1 All ER 1062, HL. Rastafarians have been held not to be a separate ethnic group: *Crown Supplies (Property Services Agency) v Dawkins* [1993] ICR 517, sub nom *Dawkins v Department of the Environment* [1993] IRLR 284, CA.

7 Ie the Race Relations Act 1976 Pt II (4-16), Pt III (ss 17-27), Pt IV (ss 28-33): see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 446 et seq.

8 Including a class resulting from the operation of the Race Relations Act 1976 s 34(1): s 34(3).

9 'Act' includes a deliberate omission: Race Relations Act 1976 s 78(1).

10 See the Race Relations Act 1976 s 34(2), (3).

11 Ie by virtue of the Race Relations Act 1976 s 4: see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 446.

12 Race Relations Act 1976 s 34(3A) (added by SI 2003/1626). The reference in the text to contract workers means an act which is unlawful by virtue of the Race Relations Act 1976 s 7: see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 448.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(1) ESSENTIALS OF CHARITABLE PURPOSES/13. Sex discrimination.

13. Sex discrimination.

Though in general the Sex Discrimination Act 1975 applies to charities, for example, in advertising for and selecting paid staff, there are two special provisions relating to them. First, it is provided¹ that any provision contained in a charitable instrument² and which provides for conferring benefits to persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant) is not rendered unlawful by the Sex Discrimination Act 1975³ and nor is any act⁴ which is done in order to give effect to such a provision⁵. However, if such provision or act discriminates directly or indirectly against women⁶ or on the grounds of gender reassignment⁷ in the context of the provision of goods, facilities or services⁸, the disposal or management of premises⁹, or consent for assignment or sub-letting¹⁰, then it must be: (1) a proportionate means of achieving a legitimate aim¹¹; or (2) for the purpose of preventing or compensating for a disadvantage linked to sex¹².

Secondly, there are further provisions in relation to educational charities, which apply to any trust deed or other instrument concerning property applicable in connection with the provision of education¹³ in specified¹⁴ establishments and in any way restricting the benefits available under the instrument to persons of one sex¹⁵. In the case of these charities, on the application of the trustees¹⁶ the Secretary of State or the Welsh Ministers¹⁷, if satisfied that the removal or modification of the restriction would conduce to the advancement of education without sex discrimination¹⁸, may by order make such modifications of the instrument as appear to him or them expedient for removing or modifying the restriction, and for any supplemental and incidental purposes¹⁹. However, if the trust was created by gift or bequest, no order must be made until 25 years after the date on which the gift or bequest took effect, unless the donor or his personal representatives, or the personal representatives of the testator, have consented in writing to the making of the application for the order²⁰. Notice²¹ of the application must be published, containing particulars of the proposed order and stating that representations may be made to the Secretary of State or the Welsh Ministers within a period specified in the notice²², which must not be less than one month from the date of the notice²³. The applicants must publish the notice in such manner as may be specified by the Secretary of State or the Welsh Ministers, and the cost of any publication of the notice may be defrayed out of the property of the trust²⁴. Before making the order the Secretary of State or the Welsh Ministers must take into account any representations duly made in accordance with the notice²⁵.

1 See the Sex Discrimination Act 1975 s 43; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 395.

2 For these purposes, 'charitable instrument' means an enactment or other instrument so far as it relates to charitable purposes: Sex Discrimination Act 1975 s 43(3) (substituted by SI 1977/528). 'Charitable purposes' means purposes which are exclusively charitable according to the law of England and Wales: Sex Discrimination Act 1975 s 43(3) (as so substituted). As to charitable purposes see PARA 2.

3 Ie Sex Discrimination Act 1975 Pt II (ss 6-20A), Pt III (ss 21A-36) and Pt IV (ss 37-42): see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 342 et seq.

4 'Act' includes a deliberate omission: Sex Discrimination Act 1975 s 82(1).

5 See Sex Discrimination Act 1975 s 43(1), (2). Section 43 was held in *Hugh-Jones v St John's College, Cambridge* [1979] ICR 848, EAT, to cover the award of a research fellowship available only to men.

6 Ie under the Sex Discrimination Act 1975 s 1; and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 344-345.

7 Ie under the Sex Discrimination Act 1975 s 2A; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 348.

8 Ie in its application to the Sex Discrimination Act 1975 s 29; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 382.

9 le in its application to the Sex Discrimination Act 1975 s 30; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 384.

10 le in its application to the Sex Discrimination Act 1975 s 31; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 384.

11 See the Sex Discrimination Act 1975 s 43(2A)(a) (added by SI 2008/963).

12 See the Sex Discrimination Act 1975 s 43(2A)(b) (added by SI 2008/963).

13 'Education' includes any form of training or instruction: Sex Discrimination Act 1975 s 82(1).

14 le specified in the Sex Discrimination Act 1975 s 22, Table paras 1-5: see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 378; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 6.

15 Sex Discrimination Act 1975 s 78(1).

16 Or the responsible body as defined by the Sex Discrimination Act 1975 s 22: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 6.

17 As to the Secretary of State and the Welsh Ministers see PARA 579 et seq.

18 References to sex discrimination refer to any discrimination falling within the Sex Discrimination Act 1975 ss 1, 2, 3A, 3B (amended by SI 2005/2467; and SI 2008/963).

19 Sex Discrimination Act 1975 s 78(2).

20 Sex Discrimination Act 1975 s 78(3).

21 'Notice' means a notice in writing: Sex Discrimination Act 1975 s 82(1).

22 Sex Discrimination Act 1975 s 78(4)

23 Sex Discrimination Act 1975 s 78(5).

24 Sex Discrimination Act 1975 s 78(6).

25 Sex Discrimination Act 1975 s 78(7).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(i) Prevention or Relief of Poverty/14. Prevention or relief of poverty.

(2) PARTICULAR CHARITABLE PURPOSES

(i) Prevention or Relief of Poverty

14. Prevention or relief of poverty.

A purpose is charitable under the first statutory description of charitable purposes if it is for the prevention or relief of poverty¹. 'Prevention' refers to that which addresses the causes of poverty², such as providing emergency aid in the wake of a natural disaster to people who are at imminent risk of becoming poor because of the loss of their home, possessions, crops or business, or providing money management and debt counselling advice and training to someone at actual risk of being in poverty³. 'Relief' refers to that which addresses the consequences of poverty⁴ and implies that the persons in question have a need attributable to their condition as poor persons which requires alleviating, and which those persons could not alleviate, or would find difficulty in alleviating, themselves from their own resources⁵. The word 'relief' is not synonymous with 'benefit'⁶.

- 1 Charities Act 2006 s 2(2)(a); and PARA 2.
- 2 See *The Prevention or Relief of Poverty for the Public Benefit* (Charity Commission, December 2008) para C1. As to the Charity Commission's publications see PARA 542.
- 3 See *The Prevention or Relief of Poverty for the Public Benefit* (Charity Commission, December 2008) Annex A.
- 4 See *The Prevention or Relief of Poverty for the Public Benefit* (Charity Commission, December 2008) para C1.
- 5 *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159, [1983] 1 All ER 288.
- 6 *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159, [1983] 1 All ER 288; *Re Dunlop, Northern Bank Executor and Trustee Co Ltd v A-G for Northern Ireland* [1984] NI 408.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(i) Prevention or Relief of Poverty/15. Meaning of 'poverty'.

15. Meaning of 'poverty'.

'Poverty' is a relative term, not confined to destitution¹. It may be taken as being where persons have to 'go short' in the ordinary acceptation of that term, due regard being had to their status in life and so forth². It is the Charity Commission's view that in current social and economic circumstances, poverty includes many disadvantages and difficulties arising from, or which cause, the lack of financial or material resources³.

1 *Trustees of Mary Clark Home v Anderson* [1904] 2 KB 645; *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687; *Re Gardom, Le Page v A-G* [1914] 1 Ch 662, CA (revsd without affecting this point sub nom *Le Page v Gardom* (1915) 84 LJCh 749, HL); *Shaw v Halifax Corp* [1915] 2 KB 170, CA; *Re Clarke, Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407; *Re De Carteret, Forster v De Carteret* [1933] Ch 103. Cf *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90 (persons employed at a weekly wage of 15 shillings held not poor within the meaning of the preamble to the ancient statute of the Charitable Uses Act 1601 (43 Eliz 1 c 4 (1601)) (now wholly repealed: see PARA 2 note 25; and PARA 46); and see *Re Central Employment Bureau for Women and Students' Careers Association Inc* [1942] 1 All ER 232; *Spiller v Maude* (1881) 32 ChD 158n (not more than £50 per annum in 1850); *Re Lacy, Royal General Theatrical Fund Association v Kydd* [1899] 2 Ch 149.

2 *Re Coulthurst, Coutts & Co v Coulthurst* [1951] Ch 661 at 666, [1951] 1 All ER 774 at 776, CA, per Sir Raymond Evershed MR; *Re Niyazi's Will Trusts* [1978] 3 All ER 785, [1978] 1 WLR 910. As to the ways in which trustees may be able to give assistance of real value see the Charity Commission guidance, *The Prevention or Relief of Poverty for the Public Benefit* (2008) Annex A.

3 See *The Prevention or Relief of Poverty for the Public Benefit* (Charity Commission, December 2008) para C1. As to the Charity Commission see PARAS 538-572. As to the Charity Commission's publications see PARA 542.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(i) Prevention or Relief of Poverty/16. Contribution by beneficiaries.

16. Contribution by beneficiaries.

Relief is charitable where it is given by way of bounty and not by way of bargain¹, but this does not mean that it cannot be charitable if the beneficiaries contribute to the cost of the benefits they receive².

1 *IRC v Society for Relief of Widows and Orphans of Medical Men* (1926) 136 LT 60 at 65 per Rowlatt J (relief of distressed widows of the medical profession who paid subscriptions; the chief income was derived from investments, donations and legacies; *Spiller v Maude* (1881) 32 ChD 158n applied); see also *Blair v Duncan* [1902] AC 37, HL; and *Verge v Somerville* [1924] AC 496, PC.

2 *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687; *Re Clarke, Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407; *Re Chaplin, Neame v A-G* [1933] Ch 115; *Re Cottam's Will Trusts, Midland Bank Executor and Trustee Co Ltd v Huddersfield Corp* [1955] 3 All ER 704, [1955] 1 WLR 1299. Cf *IRC v Peeblesshire Nursing Association* 1927 SC 215, Ct of Sess per Lord Sands; *Over Seventies Housing Association v Westminster City Council* [1974] RA 247; *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159, [1983] 1 All ER 288. See generally PARA 11.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(i) Prevention or Relief of Poverty/17. General and particular relief.

17. General and particular relief.

A gift may be general and indefinite¹ or for the poor of a particular parish, town or other place² or even on a particular estate³, or for persons of a particular religious denomination attending a certain chapel⁴, or for members of a particular regiment⁵, or for a particular class of poor or the poor of a particular class, as poor gentlewomen⁶, distressed gentlefolk⁷, persons of moderate means⁸ or widows of limited means with small dependent children⁹, or persons who are not self-supporting¹⁰, housekeepers¹¹, tradesmen of a particular kind¹², unsuccessful literary men¹³, servants¹⁴, old and worn-out clerks of a particular firm¹⁵, poor and incapacitated employees of a company¹⁶ or necessitous employees of a limited company and their dependants¹⁷, members of a particular club who fall on evil days¹⁸, 'poor struggling youths of merit'¹⁹, poor pious persons²⁰, poor emigrants²¹ or persons descended from residents of a particular borough in a particular year needing assistance to improve their condition in life by emigrating²², inmates of a workhouse²³ or hospital²⁴, debtors²⁵, 50 old men and 50 old women of a particular place, being 'needy and deserving'²⁶, the widows and orphans of poor clergymen²⁷ or of seamen of a particular port²⁸ or of the victims of a particular disaster²⁹, or widows and orphans living in a particular parish³⁰, or indigent bachelors and widowers 'who have shown sympathy with science'³¹. A gift for the working classes, including those still working, is not, by implication or otherwise, for the relief of poor people³², but a gift for the construction of a working men's hostel has been held to be charitable³³. A gift for the relief of domestic distress is charitable³⁴.

1 *A-G v Peacock* (1676) Cas temp Finch 245 (for the good of poor people for ever); *A-G v Syderfen* (1683) 1 Vern 224; *A-G v Rance* (1728) cited in Amb 422; *Nash v Morley* (1842) 5 Beav 177; *Re Darling, Farquhar v Darling* [1896] 1 Ch 50 (to the poor and the service of God).

2 *Woodford Inhabitants v Parkhurst* (1639) Duke 70; *A-G v Pearce* (1740) 2 Atk 87; *A-G v Clarke* (1762) Amb 422; *A-G v Exeter Corp* (1826) 2 Russ 45; subsequent proceedings (1827) 3 Russ 395; *A-G v Bovill* (1840) 1 Ph 762; *A-G v Blizard* (1855) 21 Beav 233; *Re Roadley, Iveson v Wakefield* [1930] 1 Ch 524 (poor of a parish); *A-G v Wilkinson* (1839) 1 Beav 370; *Russell v Kellett* (1855) 3 Sm & G 264; *Re Lucas, Rhys v A-G* [1922] 2 Ch 52 (poor of a township); *Re Lousada, Bacon v Bacon* (1887) 82 LT Jo 358 ('London poor'); *Salter v Farey* (1843) 7 Jur 831; *Re Lambeth Charities* (1853) 22 LJCh 959; *Re St Alphage, London Wall* (1888) 59 LT 614.

3 *Bristow v Bristow* (1842) 5 Beav 289; see also *A-G v Persse* (1842) 2 Dr & War 67.

4 *Re Wall, Pomeroy v Willway* (1889) 42 ChD 510.

- 5 *Re Donald, Moore v Somerset* [1909] 2 Ch 410.
- 6 *A-G v Power* (1809) 1 Ball & B 145; *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687; *Trustees of Mary Clark Home v Anderson* [1904] 2 KB 645; *Re Gardom, Le Page v A-G* [1914] 1 Ch 662, CA (on appeal sub nom *Le Page v Gardom* (1915) 84 LJCh 749, HL); *Shaw v Halifax Corpn* [1915] 2 KB 170, CA.
- 7 *Re Young, Young v Young* [1951] Ch 344, [1950] 2 All ER 1245.
- 8 *Re Clarke, Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407.
- 9 *Re De Carteret, Forster v De Carteret* [1933] Ch 103.
- 10 *Re Central Employment Bureau for Women and Students' Careers Association Inc* [1942] 1 All ER 232.
- 11 *A-G v Pearce* (1740) 2 Atk 87.
- 12 *Re White's Trusts* (1886) 33 ChD 449.
- 13 *Thompson v Thompson* (1844) 1 Coll 381 at 395 per Knight Bruce V-C.
- 14 *Reeve v A-G* (1843) 3 Hare 191; *Loscombe v Wintringham* (1850) 13 Beav 87.
- 15 *Re Gosling, Gosling v Smith* (1900) 48 WR 300.
- 16 *Re Rayner, Cloutman v Regnart* (1920) 89 LJCh 369.
- 17 *Dingle v Turner* [1972] AC 601, [1972] 1 All ER 878, HL (poor employees); *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA.
- 18 *Re Young's Will Trusts, Westminster Bank Ltd v Sterling* [1955] 3 All ER 689, [1955] 1 WLR 1269.
- 19 *Milne's Executors v Aberdeen University Court* (1905) 7 F 642, Ct of Sess.
- 20 *Nash v Morley* (1842) 5 Beav 177.
- 21 *Barclay v Maskelyne* (1858) 32 LTOS 205. See *Re Sidney, Hingeston v Sidney* [1908] 1 Ch 488, CA ('emigration uses' not charitable).
- 22 *Re Tree, Idle v Tree* [1945] Ch 325, [1945] 2 All ER 65.
- 23 *A-G v Vint* (1850) 3 De G & Sm 704.
- 24 *Reading Corpn v Lane* (1601) Duke 81.
- 25 *A-G v Painter Stainers' Co* (1788) 2 Cox Eq Cas 51; *A-G v Ironmongers' Co* (1834) 2 My & K 576.
- 26 *Re Reed* (1893) 10 TLR 87; and see *Re Wall, Pomeroy v Willway* (1889) 42 ChD 510.
- 27 *Waldo v Caley* (1809) 16 Ves 206; see also *Re Friend of the Clergy's Charters, Friend of the Clergy v A-G* [1921] 1 Ch 409.
- 28 *Powell v A-G* (1817) 3 Mer 48.
- 29 *Pease v Pattinson* (1886) 32 ChD 154; *Re Hartley Colliery Accident Relief Fund, Plummer v Jordan* (1908) 102 LT 165n; *Cross v Lloyd-Greame* (1909) 102 LT 163 (where the victims were only six in number).
- 30 *A-G v Comber* (1824) 2 Sim & St 93; *Russell v Kellett* (1855) 3 Sm & G 264.
- 31 *Weir v Crum-Brown* [1908] AC 162, HL.
- 32 *Re Sanders' Will Trusts, Public Trustee v McLaren* [1954] Ch 265, [1954] 1 All ER 667; distinguishing *Re Glyn's Will Trusts, Public Trustee v A-G* [1950] 2 All ER 1150n. As to the phrase 'working classes' see *Rodwell v Minister of Health* [1947] KB 404 at 411, [1947] 1 All ER 80 at 82 per Morris J; *HE Green & Sons v Minister of Health (No 2)* [1948] 1 KB 34 at 38, [1947] 2 All ER 469 at 471 per Denning J; *Belcher v Reading Corpn* [1950] Ch 380 at 392, [1949] 2 All ER 969 at 984 per Romer J; *Guinness Trust (London Fund) v Green* [1955] 2 All ER 871 at 873, [1955] 1 WLR 872 at 875, CA, per Denning LJ; *Re Niyazi's Will Trusts* [1978] 3 All ER 785 at 788, [1978] 1 WLR 910 at 915 per Megarry V-C.

33 *Re Niyazi's Will Trusts* [1978] 3 All ER 785, [1978] 1 WLR 910.

34 *Kendall v Granger* (1842) 5 Beav 300 at 303 per Lord Langdale MR.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(i) Prevention or Relief of Poverty/18. Poor of a particular religion.

18. Poor of a particular religion.

The relief of the poor of a particular church or religious denomination, such as Jews¹, Presbyterians², Moravians³, Unitarians⁴, Irvingites⁵ or Methodists⁶, is charitable, and has always been so, notwithstanding the law of superstitious uses⁷; so also is a gift for ministers 'persecuted or in poverty' on account of preaching certain doctrines⁸.

1 *De Costa v De Paz* (1754) 2 Swan 487n; *Re Haendler, A-G v Revel* (1931) Times, 4 July; and see *A-G v Mathieson, Re Wilkinson and Fell's Contract* [1907] 2 Ch 383 at 392, CA, per Cozens-Hardy MR (Mildmay Mission to the Jews).

2 *A-G v Wansay* (1808) 15 Ves 231.

3 *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531, HL.

4 *A-G v Shore* (1843) 11 Sim 592; *Shore v Wilson* (1842) 9 Cl & Fin 355 at 507-508, HL, per Maule J.

5 *A-G v Lawes* (1849) 8 Hare 32.

6 *Dawson v Small* (1874) LR 18 Eq 114.

7 See PARA 63.

8 *A-G v Lawes* (1849) 8 Hare 32.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(i) Prevention or Relief of Poverty/19. Gifts to poor relations.

19. Gifts to poor relations.

Perpetual trusts for the benefit of poor relations or descendants are charitable¹, though the charitable nature of these trusts is, perhaps, anomalous as lacking the necessary public element².

Gifts for poor relations intended for immediate distribution are also charitable³, but some gifts to relations are construed as being intended to be confined to statutory next of kin and these are not charitable, the object then being not to relieve poverty among a class but to benefit specific individuals⁴. Such gifts are confined to the statutory next of kin if all members of the class are entitled to participate⁵, but not if the beneficiaries are poor relations to be selected⁶, nor if a contrary intention appears from the will⁷. Poor relations who become rich must not participate⁸, and a gift for the poorest of the testator's kindred can only be charitable when intended for persons who are actually poor⁹.

A gift for the poor, giving a preference to poor relations, is charitable¹⁰. An inquiry may be directed as to who are poor relations¹¹.

1 *White v White* (1802) 7 Ves 423 (trust for apprenticing poor relations); *A-G v Price* (1810) 17 Ves 371 (poor kinsmen in a particular place); *Isaac v Defriez* (1754) Amb 595 (poorest relations); *Browne v Whalley* [1866] WN 386; *Gillam v Taylor* (1873) LR 16 Eq 581 (lineal descendants); *Re Drake's Will Trusts, Drake v Drake* [1971] Ch 179, [1970] 3 All ER 32, CA ('male descendants' construed as not limited to males descended solely through males, overruling *Bernal v Bernal* (1838) 3 My & Cr 559); *A-G v Duke of Northumberland* (1877) 7 ChD 745; contra, *Liley v Hey* (1842) 1 Hare 580; *Peek v Peek* (1869) 17 WR 1059.

2 *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA; approved in *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, [1951] 1 All ER 31, HL. The Charity Commission's position is that the poor relations cases continue to be good law under the Charities Act 2008: see *The Prevention or Relief of Poverty for the Public Benefit* (Charity Commission, December 2008) para E3. As to the Charity Commission see PARAS 538-572. As to the Charity Commission's publications see PARA 542.

3 *A-G v Buckland (or Bucknall)* (1742) cited in Amb 71n; *Mahon v Savage* (1803) 1 Sch & Lef 111; and see *Re Shepherd, Smithem v Shepherd* (1921) 152 LT Jo 18. In no charitable disposition which is valid because of its public character is there any warrant for distinguishing between trusts maintained for a period and trusts for immediate distribution: *Re Scarisbrick, Cockshott v Public Trustee* [1951] Ch 622 at 639, [1951] 1 All ER 822 at 830, CA, per Sir Raymond Evershed MR.

4 *Re Scarisbrick, Cockshott v Public Trustee* [1951] Ch 622 at 638, [1951] 1 All ER 822 at 828, CA, per Evershed MR.

5 *Re Scarisbrick, Cockshott v Public Trustee* [1951] Ch 622 at 640, [1951] 1 All ER 822 at 831, CA, per Sir Raymond Evershed MR.

6 *Re Scarisbrick, Cockshott v Public Trustee* [1951] Ch 622, [1951] 1 All ER 822, CA ('such relations of my son and daughters as in the opinion of the survivor of my said son and daughters shall be in needy circumstances'); cf *Re Cohen, Cowan v Cohen* [1973] 1 All ER 889, [1973] 1 WLR 415 (relatives in special need).

7 *Carr v Bedford* (1678) 2 Rep Ch 146; *Griffith v Jones* (1686) 2 Rep Ch 394; *Edge v Salisbury* (1749) Amb 70 ('nearest relations'); *Brunsdon v Woolredge* (1765) Amb 507 ('mother's poor relations'); *Widmore v Woodroffe* (1766) Amb 636 ('most necessitous of my relations'); *Gower v Mainwaring* (1750) 2 Ves Sen 87 at 110 per Lord Hardwicke LC ('friends and relations' means 'relations'); see also *Roach v Hammond* (1715) Prec Ch 401; *Anon* (1716) 1 P Wms 327 ('poor relations'); *Green v Howard* (1779) 1 Bro CC 31 ('testator's relations'). As to such a bequest's being void for uncertainty when not confined to statutory next of kin see *Widmore v Woodroffe* (1766) Amb 636 at 640 per Lord Hardwicke LC; *Mahon v Savage* (1803) 1 Sch & Lef 111; *Brandon v Brandon* (1819) 3 Swan 312 ('nearest and next of kin').

8 *Mahon v Savage* (1803) 1 Sch & Lef 111.

9 *A-G v Duke of Northumberland* (1877) 7 ChD 745; and see *A-G v Price* (1810) 17 Ves 371.

10 *Waldo v Caley* (1809) 16 Ves 206.

11 *A-G v Price* (1810) 17 Ves 371; *A-G v Sidney Sussex College, Cambridge* (1865) 34 Beav 654; revsd without affecting this point (1866) 21 ChD 514n.

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20. Gifts to other limited classes of the poor.

By analogy with the poor relations cases¹, it has been held that trusts for the relief of necessitous employees of a limited company and their dependants², for the benefit of widows and orphaned children of deceased officers and ex-officers of a bank (the terms of the gift indicating that it was intended for the relief of privation)³, and for fellow members of a club who may fall on evil days⁴, are charitable, despite the lack of a sufficient section of the public as objects of the charity. These trusts would not be valid charitable trusts if not restricted to the relief of poverty⁵.

On the same principle, gifts to friendly societies for the relief of poverty among members are charitable⁶, though such gifts are not charitable where the purpose is the relief of sickness or distress generally⁷. It may be that the validity of a trust to assist emigration by persons residing in a particular area before a certain date and their descendants depends on the presence of the element of relief of poverty⁸.

1 See PARA 19.

2 *Dingle v Turner* [1972] AC 601, [1972] 1 All ER 878, HL (poor employees); *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA; see also *Re Gosling, Gosling v Smith* (1900) 48 WR 300 (old and worn-out clerks of a banking firm), doubted in *Gibson v South American Stores (Gath and Chaves) Ltd*; *Re Rayner, Cloutman v Regnart* (1920) 89 LJCh 369 (poor and incapacitated employees of a company), distinguishing *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90.

3 *Re Coulthurst, Coutts & Co v Coulthurst* [1951] Ch 661, [1951] 1 All ER 774, CA.

4 *Re Young's Will Trusts, Westminster Bank Ltd v Sterling* [1955] 3 All ER 689, [1955] 1 WLR 1269.

5 See *Re Cox, Baker v National Trust Co Ltd* [1955] AC 627, [1955] 2 All ER 550, PC. As to the relief of poverty see PARA 14 et seq.

6 *Spiller v Maude* (1881) 32 ChD 158n; *Pease v Pattinson* (1886) 32 ChD 154; *Re Buck, Bruty v Mackey* [1896] 2 Ch 727; *Re Lacy, Royal General Theatrical Fund Association v Kydd* [1899] 2 Ch 149; *IRC v Society for Relief of Widows and Orphans of Medical Men* (1926) 136 LT 60; cf *Dingle v Turner* [1972] AC 601 at 617, [1972] 1 All ER 878 at 883, HL, per Lord Cross.

7 *Re Hobourn Aero Components Ltd's Air Raid Distress Fund, Ryan v Forrest* [1946] Ch 194, [1946] 1 All ER 501, CA; *Waterson v Hendon Borough Council* [1959] 2 All ER 760, [1959] 1 WLR 985; *Re Clark's Trust* (1875) 1 ChD 497; *Cunnack v Edwards* [1896] 2 Ch 679, CA; but cf *Re Forster, Gellatly v Palmer* [1939] Ch 22, [1938] 3 All ER 767.

8 *Re Tree, Idle v Tree* [1945] Ch 325, [1945] 2 All ER 65, as explained in *Davies v Perpetual Trustee Co Ltd* [1959] AC 439, [1959] 2 All ER 128, PC.

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21. Relief of poverty inferred or indirect.

In some cases an unexpressed intention to relieve poverty may be inferred from the nature of the gift¹. The relief of poverty may also be effected indirectly. Thus, bequests in aid of the granting of allotments², the apprenticing of poor children³, and the distribution of doles⁴, are charitable.

Similarly, the following are charitable: the establishment, maintenance and support of institutions or funds for the relief of various forms of poverty or distress, such as soup kitchens⁵, hospitals and dispensaries⁶ and, as conducive to the work of hospitals, funds for providing accommodation for relatives who come from a distance to visit patients critically ill in hospital⁷, funds for homes of rest for nurses⁸ and funds to provide extra comforts for nurses at Christmas⁹, funds to provide extra amenities for patients in paying beds in hospitals¹⁰, nursing homes or societies for persons of moderate means¹¹, convalescent homes¹², homes of rest¹³, a house to be maintained by the local authority as a children's home¹⁴, asylums¹⁵, almshouses¹⁶, homes for lady teachers¹⁷ or ladies in reduced circumstances¹⁸ or working girls¹⁹, orphanages²⁰, institutions for the benefit of impoverished actors²¹, and the sick and poor funds of a parish church²². Neighbourhood law centres formed for the purpose of giving legal aid and advice to poor persons have been registered as charities²³, as have trusts to provide low interest or

interest-free loans to assist poor persons to purchase freehold or leasehold housing accommodation²⁴. Gifts to religious communities having for their object the relief of the poor are charitable²⁵.

1 See eg *A-G v Comber* (1824) 2 Sim & St 93 (widows and orphans); *Thompson v Corby* (1860) 27 Beav 649 (aged widows and spinsters); *Re Dudgeon, Truman v Pope* (1896) 74 LT 613 (respectable single women over 60 years of age); *Re Wall, Pomeroy v Willway* (1889) 42 ChD 510 (Unitarians of over 50 years of age attending a particular chapel); *Re Gosling, Gosling v Smith* (1900) 48 WR 300 (pensioning old and worn-out clerks); *Re Lucas, Rhys v A-G* [1922] 2 Ch 52 (small weekly payments to oldest respectable inhabitants of named place); *Verge v Somerville* [1924] AC 496, PC (Australian Repatriation Fund); *Re Roadley, Iveson v Wakefield* [1930] 1 Ch 524 (maintenance of patients from named parishes at named hospitals); *Re Coulthurst, Coutts & Co v Coulthurst* [1951] Ch 661, [1951] 1 All ER 774, CA (widows and orphaned children of deceased officers and deceased ex-officers of bank considered by reason of financial circumstances most deserving); *Re Niyazi's Will Trusts* [1978] 3 All ER 785, [1978] 1 WLR 910 (gift for construction of working men's hostel). Cf *Re Sidney, Hingeston v Sidney* [1908] 1 Ch 488, CA (emigration uses: not charitable); *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90 (holiday fund for employees of a company: not charitable); *A-G for Northern Ireland v Forde* [1932] NI 1, CA (gift to widows of persons resident on estate: not charitable).

2 *Crafton v Frith* (1851) 4 De G & Sm 237. See also the Charities Act 1993 s 79(1); and PARA 240.

3 *A-G v Minshull* (1798) 4 Ves 11; *A-G v Earl Winchelsea* (1791) 3 Bro CC 373; *A-G v Wansay* (1808) 15 Ves 231.

4 *A-G v Minshull* (1798) 4 Ves 11; *A-G v Bovill* (1840) 1 Ph 762; *Thompson v Thompson* (1844) 1 Coll 381 at 392 per Knight Bruce V-C.

5 *Biscoe v Jackson* (1887) 35 ChD 460, CA.

6 *Pelham v Anderson* (1764) 2 Eden 296; *A-G v Gascoigne* (1833) 2 My & K 647; *A-G v Kell* (1840) 2 Beav 575; *Wharton v Masterman* [1895] AC 186, HL; *Re Cox, Cox v Davie* (1877) 7 ChD 204; *Re Garrard, Gordon v Craigie* [1907] 1 Ch 382; *Re Weir Hospital* [1910] 2 Ch 124, CA; *Re Welsh Hospital (Netley) Fund, Thomas v A-G* [1921] 1 Ch 655; *Re Roadley, Iveson v Wakefield* [1930] 1 Ch 524; *Re Resch's Will Trusts, Le Cras v Perpetual Trustee Co Ltd* [1969] 1 AC 514, sub nom *Le Cras v Perpetual Trustee Co Ltd* [1967] 3 All ER 915, PC. Hospitals give in-patients continuous treatment; dispensaries give out-patients occasional medical and surgical aid: *Re Ford* [1945] 1 All ER 288. Not all hospitals are charitable, but a gift in a will may be construed as a gift only to hospitals not run for profit, which are charitable: *Re Smith's Will Trusts, Barclays Bank Ltd v Mercantile Bank Ltd* [1962] 2 All ER 563, [1962] 1 WLR 763, CA.

7 *Re Dean's Will Trusts, Cowan v Board of Governors of St Mary's Hospital, Paddington* [1950] 1 All ER 882.

8 *Re White's Will Trusts, Tindall v Board of Governors of United Sheffield Hospitals* [1951] 1 All ER 528.

9 *Re Bernstein's Will Trusts, National Westminster Bank Ltd v Board of Governors of United Liverpool Hospitals* (1971) 115 Sol Jo 808.

10 *Re Adams, Gee v Barnet Group Hospital Management Committee* [1968] Ch 80, [1967] 3 All ER 285, CA.

11 *Re Clarke, Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407. Cf *IRC v Peeblesshire Nursing Association* 1927 SC 215, Ct of Sess.

12 *IRC v Trustees of Roberts Marine Mansions* (1927) 43 TLR 270, CA (seaside home at reduced charges for members of drapery and allied trades requiring rest and change of air for the benefit of their health).

13 *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687 (home of rest for lady teachers); *Re James, Grenfell v Hamilton* [1932] 2 Ch 25 (home of rest for certain religious sisters and clergy and persons chosen by mother superior); *Re Chaplin, Neame v A-G* [1933] Ch 115 (home of rest to afford means of recuperation from strain).

14 *Re Sahal's Will Trusts, Alliance Assurance Co Ltd v A-G* [1958] 3 All ER 428, [1958] 1 WLR 1243; though see also *Re Cole, Westminster Bank Ltd v Moore* [1958] Ch 877, [1958] 3 All ER 102, CA.

15 *Harbin v Masterman* (1871) LR 12 Eq 559; *Harbin v Masterman* [1894] 2 Ch 184, CA; affd sub nom *Wharton v Masterman* [1895] AC 186, HL (asylum for destitute orphans); *Henshaw v Atkinson* (1818) 3 Madd 306 (blind asylum).

16 *Mayor of London's Case* (1639) Duke 83; *Re Whiteley, Bishop of London v Whiteley* [1910] 1 Ch 600; and see *Chamberlayne v Brockett* (1872) 8 Ch App 206. Cf *Re Brown, Brown v Brown* (1900) 32 OR 323 (luxuries for inmates of poorhouse).

17 *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687 (the ladies in question paid part of the expenses of board and lodging).

18 *Trustees of Mary Clark Home v Anderson* [1904] 2 KB 645; *Re Gardom, Le Page v A-G* [1914] 1 Ch 662, CA; *Shaw v Halifax Corp* [1915] 2 KB 170, CA; *Re Armitage, Ellam v Norwich Corp* [1972] Ch 438, sub nom *Re Armitage's Will Trusts, Ellam v City and County of Norwich* [1972] 1 All ER 708.

19 *Rolls v Miller* (1884) 27 ChD 71, CA.

20 *Hall v Derby Borough Urban Sanitary Authority* (1885) 16 QBD 163, DC; *Harbin v Masterman* [1894] 2 Ch 184, CA (affd sub nom *Wharton v Masterman* [1895] AC 186, HL); *Re Clergy Society* (1856) 2 K & J 615; *Re Douglas, Obert v Barrow* (1887) 35 ChD 472.

21 *Spiller v Maude* (1881) 32 ChD 158n; *Re Lacy, Royal General Theatrical Fund Association v Kydd* [1899] 2 Ch 149.

22 *Re Garrard, Gordon v Craigie* [1907] 1 Ch 382 (conceded in argument).

23 *Report of the Charity Commissioners for England and Wales for 1974* (HC Paper (1974-75) no 381) paras 67-72.

24 *Report of the Charity Commissioners for England and Wales for 1990* (HC Paper (1990-91) no 362) App A (e).

25 *Cocks v Manners* (1871) LR 12 Eq 574; *Re Delany, Conoley v Quick* [1902] 2 Ch 642, and cases there cited.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(ii) The Advancement of Education/22. Advancement of education.

(ii) The Advancement of Education

22. Advancement of education.

A purpose is charitable under the second statutory description of charitable purposes if it is for the advancement of education¹. The advancement and propagation of education and learning generally are charitable purposes², even in the absence of any element of poverty in the class of beneficiaries³, but a gift being clearly educational is not sufficient to stop the court from requiring evidence of public benefit⁴.

It need not be confined to education by a teacher in a classroom⁵, and it need not be connected with teaching or education in the conventional sense⁶. Thus the purposes of a students' union attached to a medical college⁷, or a polytechnic⁸, have been held to be charitable.

This category of charitable purposes extends to the improvement of a useful branch of human knowledge and its public dissemination⁹, though a gift which merely tends to the increase of knowledge may not be charitable¹⁰, and research of a private character, for example for the benefit of the members of a particular society, would not normally be charitable¹¹. The promotion of academic research may be a charitable purpose if the research is of educational value to the researcher, or if it is so directed as to lead to something which will pass into the store of educational material or to improve the sum of communicable knowledge in an area which education may cover¹². The principles in relation to research are as follows¹³.

- 32 (1) A trust for research will ordinarily qualify as a charitable trust if, but only if: (a) the subject matter of the proposed research is a useful subject of study; and (b) it is contemplated that knowledge acquired as a result of the research will be disseminated to others; and (c) the trust is for the benefit of the public, or a sufficiently important section of the public¹⁴.
- 33 (2) In the absence of a contrary context, however, the court will be readily inclined to construe a trust for research as importing subsequent dissemination of the results thereof¹⁵.
- 34 (3) Furthermore, if a trust for research is to constitute a valid trust for the advancement of education, it is not necessary either: (a) that a teacher/pupil relationship should be in contemplation; or (b) that the persons to benefit from the knowledge to be acquired should be persons who are already in the course of receiving 'education' in the conventional sense¹⁶.
- 35 (4) In any case where the court has to determine whether a bequest for the purposes of research is or is not of a charitable nature, it must pay due regard to any admissible extrinsic evidence which is available to explain the wording of the will in question or the circumstances in which it was made¹⁷.

Where a gift is clearly educational the court will not inquire into the efficacy of the method of education advocated¹⁸.

The furtherance of 'religious and mental improvement' is charitable¹⁹, as is the Scout movement, which exists to instruct boys of all classes in the principles of loyalty, discipline and good citizenship²⁰.

Education in political matters in the interests of one party only is not charitable²¹; nor is adult education with particular reference to the memorandum of one political party²². If the essential or dominant purpose is not education but a political object it is not charitable²³.

Many purposes which fall to be considered under this division of charitable purposes may also be considered charitable as being for the advancement of the arts, culture, heritable or science²⁴, and may be accepted as falling under either or both of these categories²⁵.

1 See the Charities Act 2006 s 2(2)(b); and PARA 2.

2 *Whicker v Hume* (1858) 7 HL Cas 124; *President of United States of America v Drummond* (1838) cited in 7 HL Cas 155.

3 *R v Income Tax Special Comrs, ex p University College of North Wales* (1909) 78 LJB 576 at 578, CA, per Cozens-Hardy MR.

4 See the Charities Act 2008 s 3(2); and PARA 7. Previously where a gift was clearly educational the court did not require evidence of public benefit, although this did not prevent evidence being admissible to enable the court to decide whether there was any educational tendency in the gift: *Re Pinion, Westminster Bank Ltd v Pinion* [1965] Ch 85, [1964] 1 All ER 890, CA; affg on this point [1965] Ch 85, [1963] 2 All ER 1049.

5 *Royal Choral Society v IRC* [1943] 2 All ER 101, CA; *Re Koeppler Will Trusts, Barclays Bank Trust Co Ltd v Slack* [1986] Ch 423, [1985] 2 All ER 869, CA.

6 See *Re Compton, Powell v Compton* [1945] Ch 123 at 127, [1945] 1 All ER 198 at 200, CA, per Lord Greene MR; *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669 at 680, [1964] 3 All ER 46 at 52 per Wilberforce J; *Re Koeppler Will Trusts, Barclays Bank Trust Co Ltd v Slack* [1986] Ch 423, [1985] 2 All ER 869, CA (conferences for highly qualified participants on recognised academic subjects held to be for the advancement of education). But see also *Re Shaw, Public Trustee v Day* [1957] 1 All ER 745, [1957] 1 WLR 729; on appeal [1958] 1 All ER 245n, CA.

7 *London Hospital Medical College v IRC* [1976] 2 All ER 113, [1976] 1 WLR 613 (union existed solely to further educational purposes of college: benefits received by students incidental to implementation of those purposes).

8 *A-G v Ross* [1985] 3 All ER 334, [1986] 1 WLR 252. Note the *Attorney General's Guidance on Expenditure by Student Unions: Report of Charity Commissioners for England and Wales for 1983* (HC Paper (1983-84) no 447) App A. See also the Further and Higher Education Act 1992 s 77 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 649), which permits the transformation of polytechnics into universities with the consent of the Privy Council.

9 *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73 at 102, [1971] 3 All ER 1029 at 1046, CA, per Buckley LJ. See also *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* (1999) 169 DLR (4th) 34, Can SC (structured transmission of useful information and training).

10 *Re Shaw, Public Trustee v Day* [1957] 1 All ER 745, [1957] 1 WLR 729, following *Whicker v Hume* (1858) 7 HL Cas 124; and *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451, CA.

11 See *Re British School of Egyptian Archaeology, Murray v Public Trustee* [1954] 1 All ER 887 at 890, [1954] 1 WLR 546 at 551 per Harman J; *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669 at 681, [1964] 3 All ER 46 at 53 per Wilberforce J.

12 See *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669 at 680, [1964] 3 All ER 46 at 52 per Wilberforce J. See also *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA.

13 *Re Besterman's Will Trusts* (21 January 1980, unreported) per Slade J, cited by the same judge in *McGovern v A-G* [1982] Ch 321 at 352-353, [1981] 3 All ER 493 at 518. See also *Re Koeppler Will Trusts, Barclays Bank Trust Co Ltd v Slack* [1986] Ch 423, [1985] 2 All ER 869, CA.

14 *Re Besterman's Will Trusts* (21 January 1980, unreported) per Slade J, cited by the same judge in *McGovern v A-G* [1982] Ch 321 at 352-353, [1981] 3 All ER 493 at 518.

15 *Re Besterman's Will Trusts* (21 January 1980, unreported) per Slade J, cited by the same judge in *McGovern v A-G* [1982] Ch 321 at 352-353, [1981] 3 All ER 493 at 518.

16 *Re Besterman's Will Trusts* (21 January 1980, unreported) per Slade J, cited by the same judge in *McGovern v A-G* [1982] Ch 321 at 352-353, [1981] 3 All ER 493 at 518.

17 *Re Besterman's Will Trusts* (21 January 1980, unreported) per Slade J, cited by the same judge in *McGovern v A-G* [1982] Ch 321 at 352-353, [1981] 3 All ER 493 at 518.

18 *Re Shaw's Will Trusts, National Provincial Bank Ltd v National City Bank Ltd* [1952] Ch 163, [1952] 1 All ER 49.

19 *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638; *Barralet v A-G* [1980] 3 All ER 918, sub nom *Re South Place Ethical Society, Barralet v A-G* [1980] 1 WLR 1565 (study and dissemination of ethical principles and the cultivation of a rational religious sentiment).

20 *Re Webber, Barclays Bank Ltd v Webber* [1954] 3 All ER 712, [1954] 1 WLR 1500, following *Re Alexander* (1932) Times, 30 June. Presumably, charitable status is by analogy extended to the Guide movement.

21 *Bonar Law Memorial Trust v IRC* (1933) 49 TLR 220.

22 *Re Hopkinson, Lloyds Bank Ltd v Baker* [1949] 1 All ER 346; see also PARA 60.

23 *Re Bushnell, Lloyds Bank Ltd v Murray* [1975] 1 All ER 721, [1975] 1 WLR 1596. See also *Webb v O'Doherty* (1991) 3 Admin LR 731, (1991) Times, 11 February (the funds of a students' union, an educational charity, could not be used to campaign for an end to the First Gulf War, a political purpose). Education of the public in the subject of militarism and disarmament was political and not a charitable object: *Southwood v A-G* [2000] WTLR 1199, CA.

24 See under the Charities Act 2006 s 2(2)(f); see PARAS 2, and 37.

25 See eg *Re Shakespeare Memorial Trust, Earl of Lytton v A-G* [1923] 2 Ch 398; *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669, [1964] 3 All ER 46; *Construction Industry Training Board v A-G* [1971] 3 All ER 449, [1971] 1 WLR 1303 (affd without dealing with this point [1973] Ch 173, [1972] 2 All ER 1339, CA); *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA.

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23. Education of limited class.

Gifts for the education of special classes of persons forming a section of the community¹, such as women and girls who are not self-supporting², or the daughters of missionaries³, or persons professing particular religious doctrines⁴, or the employees in the whole of a particular industry⁵, and gifts for educational purposes with a provision for the participation of the founder's kin, are charitable⁶.

However, gifts for the education of descendants of named persons⁷, or for the education of employees or of children of employees or former employees of a limited company⁸, are not charitable, and an institute maintained for the promotion of efficiency, progress and general development among persons engaged or employed in insurance was held to be for the benefit, not of the public, but of the insurance profession⁹.

1 See *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 305, [1951] 1 All ER 31 at 33, HL, per Lord Simonds. As to whether purposes satisfy the requirement of benefiting a sufficient section of the community see PARA 8. For provision as to racial discrimination see PARA 12, and as to sex discrimination see PARA 13.

2 *Re Central Employment Bureau for Women and Students' Careers Association Inc* [1942] 1 All ER 232.

3 *German v Chapman* (1877) 7 ChD 271, CA.

4 *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531, HL; *Walsh v Gladstone* (1843) 1 Ph 290; *Carbery v Cox* (1852) 3 L Ch R 231n (Roman Catholics); *Re Michel's Trust* (1860) 28 Beav 39 (Jews).

5 *Construction Industry Training Board v A-G* [1971] 3 All ER 449, [1971] 1 WLR 1303; affd without dealing with this point [1973] Ch 173, [1972] 2 All ER 1339, CA.

6 *Spencer v All Souls' College* (1762) Wilm 163; *A-G v Sidney Sussex College, Cambridge* (1866) 21 ChD 514n; *Re Lavelle, Concannon v A-G* [1914] 1 IR 194 (explained in *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA); and see *Re Koettgen's Will Trusts, Westminster Bank Ltd v Family Welfare Association Trustees Ltd* [1954] Ch 252, [1954] 1 All ER 581; and PARA 9.

7 *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA. Cf *Laverty v Laverty* [1907] 1 IR 9 (education of 'any boy or man' of a particular surname: not charitable); and see *Davies v Perpetual Trustee Co Ltd* [1959] AC 439, [1959] 2 All ER 128, PC.

8 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, [1951] 1 All ER 31, HL, doubting *Re Rayner, Cloutman v Regnart* (1920) 89 LJCh 369; *Re Leverhulme, Cooper v Leverhulme* [1943] 2 All ER 143. See also *Re Cox, Baker v National Trust Co Ltd* [1955] AC 627, [1955] 2 All ER 550, PC; *IRC v Educational Grants Association Ltd* [1967] Ch 993, [1967] 2 All ER 893, CA.

9 *Chartered Insurance Institute v London Corpn* [1957] 2 All ER 638, [1957] 1 WLR 867, DC (where the question at issue was whether the institute was an organisation whose main objects were concerned with the advancement of education, so as to entitle it to rating relief); but see *Royal College of Nursing v St Marylebone Corpn* [1959] 3 All ER 663, [1959] 1 WLR 1077, CA.

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24. Education in particular subjects.

The promotion of education in particular subjects, such as art¹, artistic taste², the appreciation of the fine arts³, music⁴ or the music of one particular composer⁵, choral singing⁶, playing the organ⁷, drama⁸, the arts of social intercourse⁹, the Irish language¹⁰, archaeology¹¹, commercial education¹², training for industrial employment¹³, craftsmanship¹⁴, the art and science of government¹⁵, economic and sanitary science¹⁶, psychological healing¹⁷, or Christian knowledge¹⁸, is charitable. But education in the cause of a particular political party is not charitable¹⁹; nor is the presentation of 'classical, artistic, cultural and educational dramatic works'²⁰. A trust whose purpose is the mere increase of knowledge is not charitable in the legal sense²¹, and gifts to the Simplified Spelling Society²² and for investigations into the efficacy of a new alphabet²³ have been held not to be charitable.

1 *Re Allsop, Gell v Carver* (1884) 1 TLR 4 (school of art). A gift to 'encourage artistic pursuits' is not charitable: *Re Ogden, Taylor v Sharp* (1909) 25 TLR 382, CA; and see *Gwynn v Cardon* (c 1800) cited in 10 Ves 533; *Re Bootham Ward Strays, York, IRC v Scott* [1892] 2 QB 152 at 165, CA, per Lord Herschell. The promotion of art is charitable: *Re Town and Country Planning Act 1947, Crystal Palace Trustees v Minister of Town and Country Planning* [1951] Ch 132, [1950] 2 All ER 857n, doubting *Re Ogden, Taylor v Sharp*.

2 *Royal Choral Society v IRC* [1943] 2 All ER 101 at 105, CA, per Lord Greene MR; and see *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669, [1964] 3 All ER 46.

3 *Re Shaw's Will Trusts, National Provincial Bank Ltd v National City Bank Ltd* [1952] Ch 163, [1952] 1 All ER 49.

4 *IRC v Glasgow Musical Festival Association* 1926 SC 920, Ct of Sess (society engaged in stimulating public interest in music and encouraging those members of the public who have musical gifts to cultivate them); *Shillington v Portadown Urban Council* [1911] 1 IR 247; *Re Henry Wood National Memorial Trust, Armstrong v Moiseiwitsch* (1965) 109 Sol Jo 876 (gift to build a concert hall). A gift to any musical or literary society in a district is not charitable: *Re King, Henderson v Cranmer* [1931] WN 232.

5 *Re Delius, Emanuel v Rosen* [1957] Ch 299, sub nom *Re Delius' Will Trusts, Emanuel v Rosen* [1957] 1 All ER 854.

6 *Royal Choral Society v IRC* [1943] 2 All ER 101, CA; and see *Re Levien, Lloyds Bank Ltd v Worshipful Co of Musicians* [1955] 3 All ER 35, [1955] 1 WLR 964 (individual singer).

7 *Re Levien, Lloyds Bank Ltd v Worshipful Co of Musicians* [1955] 3 All ER 35, [1955] 1 WLR 964.

8 *Re Shakespeare Memorial Trust, Earl of Lytton v A-G* [1923] 2 Ch 398.

9 *Re Shaw's Will Trusts, National Provincial Bank Ltd v National City Bank Ltd* [1952] Ch 163, [1952] 1 All ER 49.

10 *A-G v Flood* (1816) Hayes & Jo App xxi at xxxviii; and see *Brownjohn v Gale* [1869] WN 133.

11 *Yates v University College, London* (1873) 8 Ch App 454 (affd (1875) LR 7 HL 438); *Re British School of Egyptian Archeology, Murray v Public Trustee* [1954] 1 All ER 887, [1954] 1 WLR 546 (Egyptology).

12 *Re Koettgen's Will Trusts, Westminster Bank Ltd v Family Welfare Association Trustees Ltd* [1954] Ch 252, [1954] 1 All ER 581 (conceded).

13 *Construction Industry Training Board v A-G* [1971] 3 All ER 449, [1971] 1 WLR 1303; affd without dealing with this point [1973] Ch 173, [1972] 2 All ER 1339, CA.

14 *IRC v White and A-G* (1980) 55 TC 651.

15 *Re Arthur McDougall Fund Trusts, Thompson v Fitzgerald* [1956] 3 All ER 867, [1957] 1 WLR 81.

16 *Re Berridge, Berridge v Turner* (1890) 63 LT 470, CA.

17 *Re Osmund, Midland Bank Executor and Trustee Co Ltd v A-G* [1944] Ch 206, [1944] 1 All ER 262, CA.

18 *A-G v Stepney* (1804) 10 Ves 22.

19 *Re Hopkinson, Lloyds Bank Ltd v Baker* [1949] 1 All ER 346; *Bonar Law Memorial Trust v IRC* (1933) 49 TLR 220. Education of the public in the subject of militarism and disarmament was political and not a charitable object: *Southwood v A-G* [1998] 40 LS Gaz R 37, Times, 26 October; affd [2000] WTLR 1199, CA.

20 *Associated Artists Ltd v IRC* [1956] 2 All ER 583, [1956] 1 WLR 752.

21 See the cases cited in PARA 22.

22 *Trustees of Sir GB Hunter (1922) C Trust v IRC* (1929) 45 TLR 344.

23 *Re Shaw, Public Trustee v Day* [1957] 1 All ER 745, [1957] 1 WLR 729; appeal dismissed by consent on terms [1958] 1 All ER 245n, CA.

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25. Preservation of objects of educational value.

The preservation of objects of historic interest for public inspection is a charitable purpose¹, whether they be specimen buildings² or a collection of armour, antiques and articles of vertu³. However, the preservation intact of a collection of paintings, furniture and other objects as a museum to be open to the public may not be charitable if the gift, carried out in accordance with the donor's intentions, is shown to have no possible educational value⁴.

1 These may also fall under the sixth statutory description of charitable purposes as being for the advancement of culture or heritage: See the Charities Act 2006 s 2(2)(f); and PARAS 2, 37.

2 *Re Cranstoun, National Provincial Bank Ltd v Royal Society for the Encouragement of Arts, Manufactures and Commerce* [1932] 1 Ch 537. See the *Report of the Charity Commissioners for England and Wales for 1990* (HC Paper (1990-91) no 362) App A (b) (Settle and Carlisle Railway Trust registered as a charity).

3 *Re Spence, Barclays Bank Ltd v Stockton-on-Tees Corpn* [1938] Ch 96, [1937] 3 All ER 684.

4 *Re Pinion, Westminster Bank Ltd v Pinion* [1965] Ch 85, [1964] 1 All ER 890, CA.

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26. Educational institutions.

The establishment and support of colleges¹, schools², professorships³, fellowships⁴, lectureships⁵, scholarships⁶ and prizes⁷, and the providing of schoolmasters⁸, are charitable purposes. Gifts to learned societies and institutions for the advancement of science⁹, such as the Royal Society or the Royal Geographical Society¹⁰, the Royal Literary Society¹¹, the Royal College of Surgeons¹² and the Zoological Society¹³, are charitable¹⁴. However, institutions which, on the true construction of their constitutions, are for the benefit of a particular profession are not charitable¹⁵. A trust to buy books for Trinity College, Oxford, was treated as charitable on the ground that a large, well-assorted library tends to the promotion of education¹⁶. An institution established for the purpose of publishing material essential for the study of a learned science may be charitable, notwithstanding that the material is directly of use primarily to the members of a profession as a professional tool¹⁷.

1 *Porter's Case* (1592) 1 Co Rep 24 b; *Plate v St John's College* (1638) Duke 77; *A-G v Comber* (1824) 2 Sim & St 93; *Christ's College, Cambridge, Case* (1757) 1 Wm Bl 90; *A-G v Whorwood* (1750) 1 Ves Sen 534 at 536 per Lord Hardwicke LC; *Walsh v Gladstone* (1843) 1 Ph 290 (Roman Catholic college); *R v Income Tax Special Comrs, ex p University College of North Wales* (1909) 78 LJB 576, CA (college founded to give instruction in all the branches of a liberal education, except theology, and drawing revenue from a government grant, fees from pupils, donations, etc, as well as from investments); *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL (college incorporated for promotion and encouragement of the study and practice of the art and science of surgery); and see *Aberdeen University v Irvine* (1868) LR 1 Sc & Div 289, HL; *Wallis v Solicitor-General for New Zealand* [1903] AC 173, PC. On the other hand, the support of a staff training college for employees of a limited company who attend compulsorily is not charitable: *Re Leverhulme, Cooper v Leverhulme* [1943] 2 All ER 143.

2 *Gibbons v Maltyard* (1592) Poph 6; *Rugby School Case* (1626) Duke 80; *A-G v Nash* (1792) 3 Bro CC 588; *Kirkbank v Hudson* (1819) 7 Price 212; *A-G v Earl of Lonsdale* (1827) 1 Sim 105 at 109 per Leath V-C (school for gentlemen's sons); *Hartshorne v Nicholson* (1858) 26 Beav 58; *Re Sir Robert Peel's School at Tamworth, ex p Charity Comrs* (1868) 3 Ch App 543; *Re Allsop, Gell v Carver* (1884) 1 TLR 4 (school of art); *Re Gilchrist Educational Trust* [1895] 1 Ch 367; *Smith v Kerr* [1902] 1 Ch 774 at 778, CA, per Collins MR (ancient Inns of Chancery); *Re Hawkins, Walrond v Newton* (1906) 22 TLR 521 (school for religious teaching and elementary education); *Brighton College v Marriott* [1926] AC 192 at 204, HL, per Lord Blanesburgh (school for sons of noblemen and gentlemen); *The Abbey, Malvern Wells, Ltd v Ministry of Local Government and Planning* [1951] Ch 728, [1951] 2 All ER 154 (school for girls carried on by private company but dividends bound to be applied under trust deed in promoting work of school), distinguishing *Re Girls' Public Day School Trust Ltd, Girls' Public Day School Trust Ltd v Minister of Town and Country Planning* [1951] Ch 400 (school for girls carried on by private company, but certain shareholders not obliged to apply benefits for purposes of school: not charitable).

3 *Yates v University College, London* (1873) 8 Ch App 454 (affd (1875) LR 7 HL 438 (professorship of archaeology)); *Re Buckland, Buckland v Bennett* (1887) 22 LJNC 7 (professorship of economic fish culture).

4 *Jesus College Case* (1615) Duke 78.

5 *A-G v Cambridge Margaret and Regius Professors* (1682) 1 Vern 55.

6 *R v Newman* (1670) 1 Lev 284; *Re Levitt* (1885) 1 TLR 578; *University College of North Wales v Taylor* [1908] P 140, CA; *Re Williams, Taylor v Wales University* (1908) 24 TLR 716.

7 *Thompson v Thompson* (1844) 1 Coll 381 at 398 per Knight Bruce V-C; *Farrer v St Catharine's College, Cambridge* (1873) LR 16 Eq 19; *Re Mariette, Mariette v Aldenham School Governing Body* [1915] 2 Ch 284; *Chesterman v Federal Taxation Comr* [1926] AC 128, PC.

8 *Hynshaw v Morpeth Corp* (1629) Duke 69; *A-G v Earl of Winchelsea* (1791) 3 Bro CC 373.

9 As to the meaning of 'science' see PARA 37 note 1.

10 *Beaumont v Oliveira* (1869) 4 Ch App 309; *Royal Society of London and Thompson* (1881) 17 ChD 407.

11 *Thomas v Howell* (1874) LR 18 Eq 198.

12 *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL (college incorporated to promote study and practice of surgery charitable, although members obtained incidental professional advantages), explaining *Re Royal College of Surgeons of England* [1899] 1 QB 871, CA. See also *Royal College of Nursing v St Marylebone Corp* [1959] 3 All ER 663, [1959] 1 WLR 1077, CA.

13 *Re Lopes, Bence-Jones v Zoological Society of London* [1931] 2 Ch 130; followed in *North of England Zoological Society v Chester RDC* [1959] 3 All ER 116, [1959] 1 WLR 773, CA.

14 In addition to advancing education, these purposes may also fall under the sixth statutory description of charitable purposes as being for the advancement of science: see the Charities Act 2006 s 2(2)(f); and PARAS 2, 37.

15 *Eg Chartered Insurance Institute v London Corp* [1957] 2 All ER 638, [1957] 1 WLR 867.

16 *A-G v Marchant* (1866) LR 3 Eq 424 at 430 per Kindersley V-C; and cf *Re Good, Harington v Watts* [1905] 2 Ch 60.

17 *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA; though see also, as to law reporting, *Incorporated Council of Law Reporting for State of Queensland v*

Taxation Comr (1971) 45 ALJR 552, Aust HC (charitable but not educational), following *Incorporated Council of Law Reporting for the State of Queensland v Federal Taxation Comr* (1924) 34 CLR 580, Aust HC.

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27. Games and tournaments.

The promotion of organised games at a boarding school and the provision of prizes for events in school sports are charitable purposes as being for the advancement of that part of the educational work of the school which has to do with the physical development of the students¹. This has been extended to a trust to promote the physical education and development of pupils at schools and universities, as an addition to such part of their education as relates to their mental education, by providing facilities and assistance for association football and other games or sports². The promotion of annual chess tournaments with prizes, open to young men resident in a particular city, is charitable, for the game possesses educational value³.

A trust to provide an annual school treat has been held charitable as tending to the advancement of education⁴; and a trust to provide an annual outing for children of members of an ex-serviceman's club has been held charitable as serving an educational purpose⁵; but a gift to provide a pennyworth of sweets each for all children resident in a parish, unconfined to children who had attended school, has been held not charitable⁶.

Where the promotion of a game or tournament has no educational value, it may nevertheless be charitable under the seventh statutory description of charitable purposes if it advances amateur sport⁷.

1 *Re Mariette, Mariette v Aldenham School Governing Body* [1915] 2 Ch 284; and see *Re Gray, Todd v Taylor* [1925] Ch 362 (regimental sporting fund: charitable as promoting efficiency of army). Cf *Re Nottage, Jones v Palmer* [1895] 2 Ch 649, CA (see PARA 65); *Re Harrow School Governors and Murray's Contract* [1927] 1 Ch 556 (provision of school sanatorium an educational purpose within the Education Act 1921 s 117 (repealed)); *Trustees of City of Belfast YMCA v Northern Ireland Valuation Comr* [1969] NI 3, CA.

2 *IRC v McMullen* [1981] AC 1, [1980] 1 All ER 884, HL.

3 *Re Dupree's Deed Trusts, Daley v Lloyds Bank* [1945] Ch 16, [1944] 2 All ER 443.

4 *Re Mellody, Brandwood v Haden* [1918] 1 Ch 228.

5 *Re Ward's Estate, Ward v Ward* (1937) 81 Sol Jo 397.

6 *Re Pleasants, Pleasants v A-G* (1923) 39 TLR 675.

7 See the Charities Act 2006 s 2(2)(g); and PARAS 2, 38.

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(iii) The Advancement of Religion

28. Advancement of religion.

A purpose is charitable under the third statutory description of charitable purposes if it is for the advancement of religion¹. The words 'advancement of religion', as used to denote one class of legally charitable objects, mean the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests and of the observances that serve to promote and manifest it². To advance religion means to promote it, to spread its message ever wider among mankind, and to take some positive steps to sustain and increase religious belief; and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary³. Religion is concerned with man's relations with the supernatural and, whilst there is no statutory or common law definition of religion, two essential attributes are (1) faith in a supreme being⁴; and (2) worship of that supreme being⁵. A belief system which has faith in a supreme being but does not demand its worship or veneration is thus not a religion for these purposes⁶.

1 See the Charities Act 2006 s 2(2)(c); and PARA 2.

2 *Keren Kayemeth Le Jisroel Ltd v IRC* [1931] 2 KB 465 at 477, CA, per Lord Hanworth MR; affd without defining 'advancement of religion' [1932] AC 650, HL (acquisition of land in Asia Minor for settling Jews: not a religious purpose).

3 *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 3 All ER 281 at 285, [1957] 1 WLR 1080 at 1090 per Donovan J.

4 Or in more than one supreme being: see the Charities Act 2006 s 2(3)(a)(i); and PARA 2. Previously there was some doubt on this point (see *Bowman v Secular Society Ltd* [1917] AC 406 at 448-450, HL, per Lord Parker; and *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381), but the Charity Commission has long recognised polytheistic religions as capable of being the subject of a trust to advance religion: *Analysis of the Law Underpinning Public Benefit and the Advancement of Religion* (Charity Commission, September 2008) para 2.21. As to the Charity Commission's publications see PARA 542.

A supreme being need not be a god: see the Charities Act 2006 s 2(3)(a)(ii); and PARA 2. Although 'god' is not defined, the Charity Commission's position is that 'god' and 'supreme being' are not synonymous and so, in the case of a belief system without a god, faith in a supreme being other than a personified deity is still required: *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 22.

The Charity Commission's guidance refers to a 'supreme being or entity' which is taken to include a 'spiritual principle' other than a supreme being: *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 22. It is submitted that this is incorrect: if faith in any supreme being is no longer a prerequisite of religion then charity law is stripped of any meaningful way of determining what constitutes religion. For the discussion of this issue in the House of Lords, see 673 HL Official Report (5th series) col 138 et seq, 28 June 2005; and 674 HL Official Report (5th series) col 292 et seq, 12 October 2005. As to the Charity Commission see PARAS 538-572.

5 *Barralet v A-G* [1980] 3 All ER 918 at 924, sub nom *Re South Place Ethical Society, Barralet v A-G* [1980] 1 WLR 1565 at 1571-1572 per Dillon J. See however PARA 30.

6 See eg *R v Registrar General, ex p Segerdal* [1970] 2 QB 697, [1970] 3 All ER 886, CA (Church of Scientology); and *Church of Scientology's Application for Registration as a Charity* [2005] WTLR 1151.

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29. Religious purposes.

Gifts to 'religious societies' or for 'religious purposes' are prima facie charitable¹, but particular religious societies or purposes are not necessarily charitable². A religious society can exist only as an organised body, with a written or oral constitution³, devoted to promoting the spiritual teaching of that body⁴, and is charitable only in so far as its objects serve charitable religious

purposes and its powers are limited to ancillary ends, as distinct from subsidiary activities not in themselves religious or charitable⁵.

Charitable religious purposes are those which tend directly or indirectly to the instruction or edification of the public⁶. The presence of the necessary element of public benefit is a question of fact to be determined by the court upon proof by means of evidence cognisable by it, and does not depend on doctrinal belief⁷. The celebration of a religious rite, such as the saying of masses, in public has been held to confer a sufficient public benefit because of the edifying and improving effect of such celebration on the members of the public who attend⁸. Moreover, where there is a gift for a religious purpose which could be carried out in a way which is beneficial to the public, but could also be carried out in a way which would not have a sufficient element of public benefit, the gift is to be construed as a gift to be carried out only by the methods that are charitable, all non-charitable methods being excluded⁹.

Religious orders and communities are usually unincorporated associations, and unless property held by them is impressed with charitable trusts it is subject to the law relating to unincorporated associations¹⁰. The general principle that unincorporated associations supported by their members to provide benefits for themselves are not charitable does not apply with full force to associations for religious purposes¹¹. A purely contemplative or secluded order or community is not charitable, there being no element of benefit to the public from their activity of which the court will take cognisance¹²; but a gift to a community which is in contact with the general public may satisfy the requirement of public benefit¹³.

Gifts which contain a public religious element and are charitable in this way are gifts for 'promoting religion'¹⁴, for the 'worship of God'¹⁵, for the 'spread of the Gospel'¹⁶ or of Christianity¹⁷, or to be used 'in the service of my Lord and Master'¹⁸, or 'for God's work'¹⁹, for purposes 'having regard to the glory of God in the spiritual welfare of His creatures'²⁰, or for the distribution of Bibles²¹ or of other religious books²², or for organised religious pilgrimages²³, or for the maintenance of institutions formed for the promotion of religion, such as the United Society for the Propagation of the Gospel²⁴, the Protestant Alliance²⁵, the Irish Church Mission²⁶, the Church Missionary Society²⁷, the Society for Promoting Christian Knowledge²⁸, the Sunday School Association²⁹, the Young Men's Christian Association³⁰, the Church Army³¹, the Salvation Army³², or to 'the following religious societies namely . . .'³³. Religion may be promoted by the provision of organised recreational facilities³⁴.

1 *Re White, White v White* [1893] 2 Ch 41 at 53, CA, per Lindley LJ; *Arnott v Arnott* [1906] 1 IR 127; *Dunne v Byrne* [1912] AC 407 at 411, PC; *Re Ward, Public Trustee v Ward* [1941] Ch 308, sub nom *Re Ward, Public Trustee v Berry* [1941] 2 All ER 125, CA (educational or charitable or religious purposes for Roman Catholics in the British Empire: charitable).

2 *Re White, White v White* [1893] 2 Ch 41 at 51-52, CA, per Lindley LJ; *MacLaughlin v Campbell* [1906] 1 IR 588; *Gilmour v Coats* [1949] AC 426 at 449, [1949] 1 All ER 848 at 856, HL, per Lord Simonds and at 454, 859 per Lord Reid (purposes of convent of strictly cloistered nuns not charitable).

3 *Re Thackrah, Thackrah v Wilson* [1939] 2 All ER 4 (the Oxford Group; a company called The Oxford Group was afterwards incorporated: see *Oxford Group v IRC* [1949] 2 All ER 537, CA; and note 5).

4 *Keren Kayemeth Le Jisroel Ltd v IRC* [1931] 2 KB 465 at 469, CA, per Rowlatt J; approved on appeal [1932] AC 650, HL.

5 *Oxford Group v IRC* [1949] 2 All ER 537, CA (the advancement of the Christian religion in accordance with the principles of the Oxford Group Movement; the maintenance, support and assistance of the Oxford Group Movement in every way: not charitable); *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769.

6 *Cocks v Manners* (1871) LR 12 Eq 574 at 585 per Wickens V-C; *Re Delany, Conoley v Quick* [1902] 2 Ch 642 at 648 per Farwell J; *Chesterman v Federal Taxation Comr* [1926] AC 128 at 131, PC; *Re Williams, Public Trustee v Williams* [1927] 2 Ch 283 at 287 per Clauson J; cf *Re Banfield, Lloyds Bank Ltd v Smith* [1968] 2 All ER 276, [1968] 1 WLR 846; *Re Warre's Will Trusts, Wort v Salisbury Diocesan Board of Finance* [1953] 2 All ER 99, [1953] 1 WLR 725. The study and dissemination of ethical principles and the cultivation of a rational religious

sentiment is not a charitable religious purpose: *Barralet v A-G* [1980] 3 All ER 918, sub nom *Re South Place Ethical Society, Barralet v A-G* [1980] 1 WLR 1565.

7 *Re Coats' Trusts, Coats v Gilmour* [1948] Ch 340 at 347, [1948] 1 All ER 521 at 526, CA, per Lord Greene MR; on appeal sub nom *Gilmour v Coats* [1949] AC 426 at 446, [1949] 1 All ER 848 at 854, HL, per Lord Simonds. See also PARA 7.

8 *Re Hetherington* [1990] Ch 1, sub nom *Re Hetherington, Gibbs v McDonnell* [1989] 2 All ER 129 (aliter in the case of the celebration of a religious rite in private); *Re Caus, Lindeboom v Camille* [1934] Ch 162; and see *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL.

9 *Re Hetherington* [1990] Ch 1, sub nom *Re Hetherington, Gibbs v McDonnell* [1989] 2 All ER 129.

10 See the extensive discussion in *Leahy v A-G for New South Wales* [1959] AC 457, [1959] 2 All ER 300, PC.

11 *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769.

12 *Cocks v Manners* (1871) LR 12 Eq 574; *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL.

13 *Cocks v Manners* (1871) LR 12 Eq 574; *Re Braham, Daw v Samuel* (1892) 36 Sol Jo 712; *Re Charlesworth, Robinson v Archdeacon of Cleveland* (1910) 101 LT 908; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; *Re Banfield, Lloyds Bank Ltd v Smith* [1968] 2 All ER 276, [1968] 1 WLR 846; though see *Re Warre's Will Trusts, Wort v Salisbury Diocesan Board of Finance* [1953] 2 All ER 99, [1953] 1 WLR 725 (sed quaere). See also *Northern Ireland Valuation Comr v Trustees of the Redemptorist Order* [1971] NI 114, CA.

14 *A-G v Stepney* (1804) 10 Ves 22; *Baker v Sutton* (1836) 1 Keen 224; *Wilkinson v Lindgren* (1870) 5 Ch App 570; contra, *Browne v Yeall* (1791) 7 Ves 50n, doubted in *Morice v Bishop of Durham* (1805) 10 Ves 522 at 539 per Lord Eldon LC and in *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 471-472, CA, per Rigby LJ. Cf *Dunne v Byrne* [1912] AC 407, PC, explained in *Re Bain, Public Trustee v Ross* [1930] 1 Ch 224 at 230, CA, per Lord Hanworth MR.

15 *A-G v Pearson* (1817) 3 Mer 353 at 409 per Lord Eldon LC.

16 *Re Lea, Lea v Cooke* (1887) 34 ChD 528.

17 *A-G v Stepney* (1804) 10 Ves 22; *A-G v London Corp'n* (1790) 1 Ves 243; *Re Hood, Public Trustee v Hood* [1931] 1 Ch 240, CA (spreading Christian principles and minimising drink traffic).

18 *Powerscourt v Powerscourt* (1824) 1 Mol 616; *Felan v Russell* (1842) 4 I Eq R 701; *Re Darling, Farquhar v Darling* [1896] 1 Ch 50.

19 *Re Barker's Will Trusts, Barker v Crouch* (1948) 64 TLR 273.

20 *Townsend v Carus* (1844) 3 Hare 257.

21 *A-G v Stepney* (1804) 10 Ves 22.

22 *Thornton v Howe* (1862) 31 Beav 14; *Re Watson, Hobbs v Smith* [1973] 3 All ER 678, [1973] 1 WLR 1472.

23 *Re McCarthy* [1958] IR 311. It does not appear that this decision depended on any characteristic peculiar to Irish law.

24 *Re Maguire* (1870) LR 9 Eq 632.

25 *Re Delmar Charitable Trust* [1897] 2 Ch 163 (defence of doctrines of the Reformation).

26 *A-G v Becher* [1910] 2 IR 251 (conversion of Roman Catholics to Protestantism).

27 *Re Clergy Society* (1856) 2 K & J 615.

28 *Re Clergy Society* (1856) 2 K & J 615.

29 *R v Income Tax Special Comrs, ex p Essex Hall* [1911] 2 KB 434, CA.

30 *Trustees of City of Belfast YMCA v Northern Ireland Valuation Comr* [1969] NI 3, CA.

31 *Re Smith, Walker v Battersea General Hospital* (1938) 54 TLR 851; cf *Re Church Army* (1906) 75 LJCh 467, CA.

32 *Re Smith, Walker v Battersea General Hospital* (1938) 54 TLR 851; and see *Re Fowler, Fowler v Booth* (1914) 31 TLR 102, CA.

33 *Re White, White v White* [1893] 2 Ch 41 at 53, CA. See *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 466, CA, per Lindley LJ, and at 474, per Rigby LJ. See also *Grimond v Grimond* [1905] AC 124, HL (but note that this decision was on Scots law, and see the dissenting judgment of Lord Moncreiff in the Court of Session, [1905] AC 603n at 607). See also the consideration of *Re White, White v White*, in *Re Smith's Will Trusts, Barclays Bank Ltd v Mercantile Bank Ltd* [1961] 3 All ER 824, [1961] 1 WLR 1387; on appeal [1962] 2 All ER 563, [1962] 1 WLR 763, CA.

34 *Trustees of City of Belfast YMCA v Northern Ireland Valuation Comr* [1969] NI 3, CA.

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30. Religious denominations.

There is no distinction in the matter of charity between one sort of religion and another, whether monotheistic, polytheistic or non-theistic¹, or between one sect and another², or between the established church and other churches³. Gifts to 'the Church of England'⁴ or 'the Church of Rome'⁵ for its use are charitable. The advancement of the Roman Catholic and Jewish religions and of all dissenting denominations, and the maintenance and benefit of their schools and chapels are also charitable purposes⁶; the promotion of faith-healing is charitable, perhaps as being for the advancement of religion⁷. However, gifts for denominational institutions or purposes are not necessarily for religious purposes, and are therefore not charitable⁸.

1 In addition to many Christian sects, the Charity Commission has registered trusts for the advancement of the Hindu, Sikh, Islamic and Buddhist religions; and see PARA 28. As to the Charity Commission see PARAS 538-572.

2 *Thornton v Howe* (1862) 31 Beav 14 at 19-20 per Romilly MR; *Re Watson, Hobbs v Smith* [1973] 3 All ER 678, [1973] 1 WLR 1472. As to the Unification Church see *Report of the Charity Commissioners for England and Wales for 1982* (HC Paper (1982-83) no 370) App C. The Attorney General appealed against the refusal of the Charity Commissioners to accede to his request to remove the trusts from the register, but the appeal was eventually discontinued: see the statement of the Attorney General in 126 HC Official Report (6th Series), 3 February 1988 cols 977-978, and the debate in the House of Lords, 493 HL Official Report (5th Series), 10 February 1988, col 247 et seq.

3 *Gilmour v Coats* [1949] AC 426 at 458, [1949] 1 All ER 848 at 862, HL, per Lord Reid.

4 *Re Barnes, Simpson v Barnes* (1922) [1930] 2 Ch 80n.

5 *Re Schoales, Schoales v Schoales* [1930] 2 Ch 75.

6 See *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769.

7 *Re Kerin* (1966) Times, 24 May, although on appeal the order in this case was wholly set aside by consent. However faith healing even without a religious element has been recognised as charitable: *Re Le Cren Clarke, Funnell v Stewart* [1996] 1 All ER 715, [1996] 1 WLR 288. It is doubtful whether the promotion of spiritualism is charitable (cf *Re Hummeltenberg, Beatty v London Spiritualistic Alliance Ltd* [1923] 1 Ch 237), but the case cited may not be conclusive.

8 *MacLaughlin v Campbell* [1906] 1 IR 588 (Roman Catholic purposes: not charitable); *Re Stratton, Knapman v A-G* [1931] 1 Ch 197, CA (bequest to vicar for time being of parish for parochial institutions or purposes: not charitable); *Re Jackson, Midland Bank Executor and Trustee Co Ltd v Archbishop of Wales* [1930] 2 Ch 389 (bequest to archbishop to be applied in any manner he might think best for helping to carry on the work of the Church in Wales: not charitable); *Trustees of Cookstown Roman Catholic Church v IRC* (1953) 34 TC 350 (religious, educational and other parochial requirements: not charitable).

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31. Missionary purposes.

The expression 'missionary purposes' is ambiguous and may comprise objects which are not charitable¹; but the context² or surrounding circumstances³ may show that the testator used the expression in the more restricted, popular sense of Christian missionary work, in which sense a gift for missionary purposes is charitable⁴.

1 *Re Rees, Jones v Evans* [1920] 2 Ch 59; *Scott v Brownrigg* (1881) 9 LR 1r 246.

2 *Dunne v Duignan* [1908] 1 IR 228 (where, also, the words 'foreign missions' were distinguished from 'missionary purposes'); *Re Hall, Hall v Hall* (1915) 31 TLR 396 (the City Mission in London); *Jackson v A-G* [1917] 1 IR 332 (Presbyterian missions and orphans); *Re Moon's Will Trusts, Foale v Gillians* [1948] 1 All ER 300 (bequest to trustees of named church for mission work in district served by it).

3 *Re Rees, Jones v Evans* [1920] 2 Ch 59; *Re Kenny, Clode v Andrews* (1907) 97 LT 130; *Re Redish, Armfield-Marrow v Bennet* (1909) 26 TLR 42; *Re Moon's Will Trusts, Foale v Gillians* [1948] 1 All ER 300.

4 See the cases cited in notes 2-3; and *A-G v Becher* [1910] 2 IR 251; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531, HL.

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32. Support of clergy and church purposes.

The following purposes are charitable: the establishment of a bishopric¹, the provision of clergy² or preachers³, or the increase of their stipends⁴, even though conditional upon their preaching certain doctrines⁵ or a sermon in commemoration of the testator⁶, or permitting free sittings⁷, or wearing a black gown in the pulpit⁸, or preaching to a particular class of persons such as prisoners⁹, or making certain payments¹⁰, or upon condition that the benefice is never held in plurality¹¹.

A society of clergymen holding meetings to discuss pastoral matters and education is charitable, so that a gift to pay the expenses of the members' dinners, in order to encourage attendance at meetings, was held charitable¹²; as were gifts for the augmentation of livings or for the purchase of advowsons for the spread of particular religious views¹³, and trusts for the benefit of parishioners to nominate the parson¹⁴.

A gift for the assistance of the education of candidates for holy orders¹⁵, or of a rentcharge to a vicar so long as he forgoes tithes¹⁶, or for pensioning a perpetual curate, is charitable¹⁷. A gift to a society for the relief of infirm, sick and aged Roman Catholic secular priests in a particular diocese¹⁸, and a gift for active or retired evangelistic workers, including missionaries, required to be Protestants and to hold certain beliefs, tend to the advancement of religion and are charitable¹⁹. A gift of cottages to be used as rest homes for retired aged missionaries is charitable²⁰.

A gift to a parish church is charitable, having been regarded formerly as for the benefit of the parson and parishioners and their successors for ever²¹, and latterly as for church purposes, that is, purposes connected with the services of the church²². Gifts, also, for such objects connected with a church as the minister shall think fit²³, for church expenses generally²⁴, or to provide a clerk²⁵, a sexton²⁶, an organist²⁷ or choristers²⁸, are charitable; but gifts for parish work or purposes²⁹ are not, and gifts for diocesan purposes³⁰ may not be, charitable, not being restricted to the advancement of religion. A gift for the benefit of the choir of a parish church serves to maintain and improve the religious services of the church, and so is for the advancement of religion and charitable³¹. In the context of a particular will, a church may be entitled under a gift to charitable institutions³².

1 *A-G v Bishop of Chester* (1785) 1 Bro CC 444.

2 *Dundee Magistrates v Dundee Presbytery* (1861) 4 Macq 228, HL; *Pennington v Buckley* (1848) 6 Hare 451 at 453 per Wigram V-C (gift for benefit of unbeneficed curates).

3 *Pember v Knighton* (1639) Duke 381; *Penstred v Payer* (1639) Duke 381; *Grieves v Case* (1792) 4 Bro CC 67; cf *Re Braham, Daw v Samuel* (1892) 36 Sol Jo 712 (reader and lecturer for Hebrew congregation).

4 *A-G v Brereton* (1752) 2 Ves Sen 425; *A-G v Sparks* (1753) Amb 201; *Middleton v Clitherow* (1798) 3 Ves 734; *Widmore v Woodroffe* (1766) Amb 636 (Queen Anne's Bounty); *Gibson v Representative Church Body* (1881) 9 LR Ir 1; *Re Maguire* (1870) LR 9 Eq 632 (gift to Additional Curates' Aid Society); *Re Macnamara, Hewitt v Jeans* (1911) 104 LT 771.

5 *A-G v Molland* (1832) 1 You 562.

6 *Durour v Motteux* (1749) 1 Ves Sen 320; *Re Parker's Charity* (1863) 32 Beav 654; cf *Re Arber, Taylor v Shelton* (1919) Times, 13 December (annual payment to church bellringers in consideration of their ringing the bells on the anniversary of testator's death: not charitable).

7 *Re Randell, Randell v Dixon* (1888) 38 ChD 213.

8 *Re Robinson, Wright v Tugwell* [1897] 1 Ch 85, CA. As to subsequent removal of condition see *Re Robinson, Wright v Tugwell* [1923] 2 Ch 332; and PARA 178.

9 *Re Hussey's Charities, Cheyne v Apreece, Symons v Delaval* (1861) 30 LJCh 491.

10 *Re Corcoran, Corcoran v O'Kane* [1913] 1 IR 1.

11 *Re Macnamara, Hewitt v Jeans* (1911) 104 LT 771.

12 *Re Charlesworth, Robinson v Archdeacon of Cleveland* (1910) 101 LT 908.

13 *Re Hunter, Hood v A-G* [1897] 2 Ch 105, CA. However, such gifts are not charitable if no trust of the advowson is declared, on which ground the House of Lords reversed this decision: *Hunter v A-G* [1899] AC 309, HL. The sale of advowsons is now prohibited: see the Patronage (Benefices) Measure 1986 s 3(1); and **ECCLESIASTICAL LAW**.

14 *Re St Stephen, Coleman Street, Re St Mary the Virgin, Aldermanbury* (1888) 39 ChD 492; *Hunter v A-G* [1899] AC 309 at 322, HL, per Lord Davey; *Foley v A-G* (1721) 7 Bro Parl Cas 249, HL; *A-G v Scott* (1750) 1 Ves Sen 413; *A-G v Webster* (1875) LR 20 Eq 483 at 491 per Jessel MR. Cf on the other hand *A-G v Parker* (1747) 1 Ves Sen 43; *A-G v Forster* (1804) 10 Ves 335 at 340 per Lord Eldon LC; *A-G v Newcombe* (1807) 14 Ves 1 at 10 per Lord Eldon LC, where such a trust was considered valid but not charitable. See also *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93. However, a trust of an advowson merely to appoint a fit and proper person to fill the vacant living, without any beneficiary, is not charitable: *Re Church Patronage Trust, Laurie v A-G* [1904] 2 Ch 643, CA.

15 *Re Williams, Public Trustee v Williams* [1927] 2 Ch 283.

16 *Milbank v Lambert* (1860) 28 Beav 206. As to tithes see **ECCLESIASTICAL LAW** vol 14 PARA 1209 et seq.

17 *A-G v Parker* (1747) 1 Ves Sen 43. See also *A-G v Brereton* (1752) 2 Ves Sen 425 at 426-427 per Lord Hardwicke LC.

- 18 *Re Forster, Gellatly v Palmer* [1939] Ch 22, [1938] 3 All ER 767. This gift could not be upheld as being for the relief of poverty.
- 19 *Re Mylne, Potter v Dow* [1941] Ch 204, [1941] 1 All ER 405. Cf *Baptist Union of Ireland (Northern) Corp'n Ltd v IRC* [1945] NI 99 (fund for Baptist ministers who paid subscriptions and their widows and orphans: charitable).
- 20 *Re White's Will Trusts, Barrow v Gillard* [1955] Ch 188, [1954] 2 All ER 620.
- 21 *Re St Andrew, Holborn* (undated) cited in *Cheeseman v Partridge* (1739) 1 Atk 436 at 437.
- 22 *Re Gare, Filmer v Carter* [1952] Ch 80, [1951] 2 All ER 863. See further PARA 118.
- 23 *Re Bain, Public Trustee v Ross* [1930] 1 Ch 224, CA (gift to vicar for such objects connected with the church as he should think fit; church objects and parochial activities distinguished); *Re Martley, Simpson v Cardinal Bourne* (1931) 47 TLR 392 (for the benefit of the work of the cathedral); *Re Eastes, Pain v Paxon* [1948] Ch 257, [1948] 1 All ER 536 (gift to vicar and churchwardens of a particular church for any purposes in connection with the church). However, see also *Re Stratton, Knapman v A-G* [1931] 1 Ch 197, CA (gift to vicar of parish 'for parochial institutions or purposes': not charitable); *Re Davies, Lloyds Bank Ltd v Mostyn* (1932) 49 TLR 5, CA (gift to archbishop for work connected with the Roman Catholic church in the archdiocese: not charitable); *Farley v Westminster Bank Ltd* [1939] AC 430, [1939] 3 All ER 491, HL (gift to vicars and churchwardens of named churches for parish work: not charitable).
- 24 *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638 at 642 per Stirling J.
- 25 *Durour v Motteux* (1749) 1 Ves Sen 320.
- 26 *Durour v Motteux* (1749) 1 Ves Sen 320.
- 27 *A-G v Oakaver* (1736) cited in 1 Ves Sen 536; *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638. Cf *Re Arber, Taylor v Shelton* (1919) Times, 13 December (see note 6).
- 28 *Turner v Ogden* (1787) 1 Cox Eq Cas 316. The contrary decision in *A-G v Oakaver* (1736) cited in 1 Ves Sen 536 was discussed and not followed in *Re Royce, Turner v Wormald* [1940] Ch 514, [1940] 2 All ER 291.
- 29 *Farley v Westminster Bank Ltd* [1939] AC 430, [1939] 3 All ER 491, HL (work); *Trustees of Cookstown Roman Catholic Church v IRC* (1953) 34 TC 350; *Re Stratton, Knapman v A-G* [1931] 1 Ch 197, CA.
- 30 *Re Rumball, Sherlock v Allan* [1956] Ch 105, [1955] 3 All ER 71, CA; *Re Van Wart, Ramsay v Bourne* (1911) Times, 17 February (this report is misleading: see the order made in the case, set out in *Re Rumball, Sherlock v Allan* [1956] Ch 105 at 119, [1955] 3 All ER 71 at 78, CA); *Re Beddy* (1953) unreported, discussed in *Re Rumball, Sherlock v Allan*; *Re Davies, Lloyds Bank Ltd v Mostyn* (1932) 49 TLR 5, CA; contra, *Re Macgregor, Thompson v Ashton* (1932) 32 SRNSW 483, NSW SC (gift for diocesan purposes charitable).
- 31 *Re Royce, Turner v Wormald* [1940] Ch 514, [1940] 2 All ER 291; and see *Re Hendry, Watson v Blakeney* (1887) 56 LT 908 (choir fund apparently charitable).
- 32 *Re Nesbitt's Will Trusts, Dr Barnardo's Homes National Incorporated Association v United Newcastle-upon-Tyne Hospitals Board of Governors* [1953] 1 All ER 936, [1953] 1 WLR 595.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(iii) The Advancement of Religion/33. Gifts to holders of religious offices.

33. Gifts to holders of religious offices.

If a gift is expressed to be made to the holder of a particular religious office for the time being, it must be determined whether it is intended as a beneficial gift to the person holding that office when the gift takes effect¹, or whether it is to be held by that person and his successors in office as trustees².

If the latter is found to be the case, and if the duties and functions of the office are charitable in nature, the gift will be interpreted as a gift on trust for the charitable purposes inherent in the

office³. Thus the following gifts are charitable: gifts to a minister and his successors⁴, to a dissenting minister for the time being⁵, to a vicar and churchwardens for the time being to be applied as they think fit, without any specified object⁶, to a vicar⁷, and to women holding certain offices in a religious order or their successors⁸.

Where the gift is not merely expressed to be to the holder of a religious office and other words are added which might themselves indicate the nature of the trusts imposed by the gift, the court has to decide whether the words following the gift are intended merely to indicate that, within the scope of the trusts properly appropriate to the nature of the office by which the donee is described, the discretion is entirely the donee's, or whether by the added words the donor is himself intending to state, or at least to indicate, the trusts on which the donee is to hold the property⁹.

In the former case the added words do not render inapplicable the prima facie presumption that the gift is charitable; in the latter case the question is whether the trusts indicated by the added words are themselves exclusively charitable. Thus the following gifts are charitable: gifts to a named vicar for his work¹⁰, to the vicar of a named church to be used for his work in the parish¹¹, to a Roman Catholic archbishop to be used for such purposes as he should think fit¹², one to be applied as directed by a bishop for the general purposes of his diocese¹³, and a gift to the editors of a missionary periodical for such objects as they might think fit, being construed as intended for the benefit of associated missionary activities for which they distributed gifts¹⁴. On the other hand, a gift to a Roman Catholic archbishop and his successors to be used and expended wholly or in part as he might judge most conducive to religion in the diocese is not charitable¹⁵, for where the trusts of a gift are clearly set out they cannot be modified or limited in scope by reference to the position or character of the trustee¹⁶. Where the holder of the charitable office in question is not given sole control over the application of the property, the presumption that the purposes of the gift are the charitable purposes of the office does not apply¹⁷.

1 See eg *Re Meehan, Tobin and Tobin v Cohalan and Meehan* [1960] IR 82 (gift to a bishop for the time being absolutely: an 'O'Hagan clause', ie designed to catch any charitable legacies which might fail under the law of mortmain or otherwise, so that the purpose of the clause would be frustrated if it had been held to be a gift on charitable trusts); see also *Re Van Wart, Ramsay v Bourne* (1911) Times, 17 February, as explained in *Re Rumball, Sherlock v Allan* [1956] Ch 105, [1955] 3 All ER 71, CA.

2 In the absence of special considerations such as those indicated in note 1, a gift in virtue of office must be a gift on trust: see *Re Flinn, Public Trustee v Flinn* [1948] Ch 241 at 244, [1948] 1 All ER 541 at 542 per Jenkins J.

3 *Re Flinn, Public Trustee v Flinn* [1948] Ch 241, [1948] 1 All ER 541. The principle is not confined to the holders of religious offices, but most of the cases are in this field. See, however, *Re Spensley's Will Trusts, Barclays Bank Ltd v Staughton* [1954] Ch 233, [1954] 1 All ER 178, CA (National Trust); *Re Endacott, Corpe v Endacott* [1960] Ch 232, [1959] 3 All ER 562, CA (parish council).

4 *A-G v Molland* (1832) 1 You 562; *Thornber v Wilson* (1855) 3 Drew 245 (gift to the Roman Catholic minister of a particular chapel for a period of years); *Re Davies, Lloyd v Cardigan County Council* [1915] 1 Ch 543.

5 *A-G v Cock* (1751) 2 Ves Sen 273; *A-G v Sparks* (1753) Amb 201. The same does not apply to a gift for the particular minister in office: *Doe d Phillips v Aldridge* (1791) 4 Term Rep 264.

6 *Re Garrard, Gordon v Craigie* [1907] 1 Ch 382; see also *Thornber v Wilson* (1855) 3 Drew 245; *Re Delany, Conoley v Quick* [1902] 2 Ch 642 at 646 per Farwell J; and distinguish cases where the gift fails for uncertainty: *Fowler v Fowler* (1864) 33 Beav 616.

7 *Re Simson, Fowler v Tinley* [1946] Ch 299, [1946] 2 All ER 220.

8 *Re Delany, Conoley v Quick* [1902] 2 Ch 642.

9 See *Re Rumball, Sherlock v Allan* [1956] Ch 105 at 115, [1955] 3 All ER 71 at 75, CA, per Lord Evershed MR. See also *Re Spensley's Will Trusts, Barclays Bank Ltd v Staughton* [1954] Ch 233, [1954] 1 All ER 178, CA.

10 See *Re Simson, Fowler v Tinley* [1946] Ch 299, [1946] 2 All ER 220.

11 *Re Simson, Fowler v Tinley* [1946] Ch 299, [1946] 2 All ER 220, distinguishing *Farley v Westminster Bank Ltd* [1939] AC 430, [1939] 3 All ER 491, HL.

12 *Re Flinn, Public Trustee v Flinn* [1948] Ch 241, [1948] 1 All ER 541, distinguishing *Re Davidson, Minty v Bourne* [1909] 1 Ch 567, CA (gift to Roman Catholic archbishop for the time being to be distributed between charitable, religious or other societies, institutions, persons or objects in connection with the Roman Catholic faith in England); *Re Rumball, Sherlock v Allan* [1956] Ch 105, [1955] 3 All ER 71, CA (gift to bishop for the time being to be used as he thinks fit in his diocese: charitable).

13 *Re Money's Will Trusts, Mawdesley v Jerusalem and East Mission* (1965) 109 Sol Jo 68 (where the principle was applied even though the bishop was not the trustee of the fund, since his power to direct the purposes for which the property should be applied was clearly a fiduciary one). See also the comments of Jenkins LJ in *Re Rumball, Sherlock v Allan* [1956] Ch 105 at 124, [1955] 3 All ER 71 at 81, CA, on *Re Beddy* (1953, unreported).

14 *Re Norman, Andrew v Vine* [1947] Ch 349, [1947] 1 All ER 400.

15 *Dunne v Byrne* [1912] AC 407, PC; and see *Re Davidson, Minty v Bourne* [1909] 1 Ch 567, CA; *Re Stratton, Knapman v A-G* [1931] 1 Ch 197, CA; *Re Davies, Lloyds Bank Ltd v Mostyn* (1932) 49 TLR 5, CA; *Farley v Westminster Bank Ltd* [1939] AC 430, [1939] 3 All ER 491, HL.

16 *Dunne v Byrne* [1912] AC 407 at 410, PC, per Lord Macnaghten. Conversely, where the expressed trusts are charitable they cannot be rendered non-charitable by the character of the trustees: *Re Arthur McDougall Fund Trusts, Thompson v Fitzgerald* [1956] 3 All ER 867, [1957] 1 WLR 81; *Construction Industry Training Board v A-G* [1971] 3 All ER 449, [1971] 1 WLR 1303; affd without dealing with this point [1973] Ch 173, [1972] 2 All ER 1339, CA.

17 *Re Spensley's Will Trusts, Barclays Bank Ltd v Staughton* [1954] Ch 233, [1954] 1 All ER 178, CA, disapproving on this point Vaisey J at [1952] Ch 886, [1952] 2 All ER 49.

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34. Religious buildings and burial grounds.

The following are charitable purposes: the provision, maintenance, repair and ornamentation of a parish church¹ or of a church, chapel or meeting house of any particular Christian denomination², the upkeep of a chapel and Sunday school, which may include maintaining both the fabric and the services³, the provision or repair of a chancel⁴, spire⁵, organ⁶, bells⁷, gallery⁸, clock⁹, stained-glass window¹⁰, or monument in a church¹¹ and the continuation of the seating in a parish church¹².

Gifts for maintaining or providing a churchyard¹³ or cemetery¹⁴, or a burial ground for a particular sect¹⁵, or for headstones to the graves of certain almshouse pensioners¹⁶, are also charitable, as is the repair of a parsonage¹⁷.

A company established to promote cheap and sanitary methods of disposing of the dead, in particular cremation, has been held to be established for charitable purposes by analogy with the cases on burial¹⁸.

1 *Re Robertson, Colin v Chamberlin* [1930] 2 Ch 71; *Re Parker* (1859) 4 H & N 666; *Clephane v Edinburgh Magistrates* (1864) 4 Macq 603, HL; *A-G v Rupert* (1722) 2 P Wms 125; *A-G v Brown* (1818) 1 Swan 265 at 297 per Lord Eldon LC; *A-G v Vivian* (1826) 1 Russ 226; *A-G v Love* (1857) 23 Beav 499; *Re Donington Church Estate, Re Charitable Trusts Act 1853* (1860) 2 LT 10; *Re Church Estate Charity, Wandsworth* (1871) 6 Ch App 296; *A-G v Dartmouth Corp* (1883) 48 LT 933; *Re St Alphage, London Wall* (1888) 59 LT 614; *Re Eighmie, Colbourne v Wilks* [1935] Ch 524 (maintenance of parish church and its decorations).

- 2 *Re Manser, A-G v Lucas* [1905] 1 Ch 68 at 73 per Warrington J; *Re Williams, James v Williams* (1910) 26 TLR 307 (liquidation of debts on Congregational chapels); *Holmes v A-G* (1981) Times, 12 February (meeting room of the Exclusive Brethren, formerly the Plymouth Brethren); *Broxtowe Borough Council v Birch* [1981] RA 215.
- 3 *Re Strickland's Will Trusts, National Guarantee and Suretyship Association Ltd v Maidment* [1936] 3 All ER 1027.
- 4 *Hoare v Osborne* (1866) LR 1 Eq 585.
- 5 *Re Palatine Estate Charity* (1888) 39 ChD 54.
- 6 *A-G v Oakaver* (1736) cited in 1 Ves Sen 536.
- 7 *Turner v Ogden* (1787) 1 Cox Eq Cas 316; and see *Re Palatine Estate Charity* (1888) 39 ChD 54 at 59 per Stirling J.
- 8 *A-G v Day* [1900] 1 Ch 31.
- 9 *Re Church Estate Charity, Wandsworth* (1871) 6 Ch App 296; *Re Hendry, Watson v Blakeney* (1887) 56 LT 908.
- 10 *Re King, Kerr v Bradley* [1923] 1 Ch 243.
- 11 *Hoare v Osborne* (1866) LR 1 Eq 585; *Re Rigley's Trusts* (1866) 36 LJCh 147; *Re Barker, Sherrington v Dean and Chapter of St Paul's Cathedral* (1909) 25 TLR 753. As to tombs and monuments not forming part of a church see PARA 61.
- 12 *Re Raine, Walton v A-G* [1956] Ch 417, [1956] 1 All ER 355.
- 13 *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187; *Re Douglas, Douglas v Simpson* [1905] 1 Ch 279; *Re Eighmie, Colbourne v Wilks* [1935] Ch 524 (bequest to rector and churchwardens for keeping burial ground and private monument in it in repair; grave and monument in cemetery adjoining churchyard which had been closed for burials).
- 14 *A-G v Blizard* (1855) 21 Beav 233.
- 15 *Re Manser, A-G v Lucas* [1905] 1 Ch 68 (bequest for maintenance of Quaker burial ground).
- 16 *Re Pardoe, McLaughlin v A-G* [1906] 2 Ch 184. As to private tombs see PARA 61.
- 17 *A-G v Bishop of Chester* (1785) 1 Bro CC 444.
- 18 *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corp'n* [1968] AC 138, [1967] 3 All ER 215, HL. However, this probably now falls under the thirteenth category of charitable purpose, as a purpose recognised as charitable under existing law but not listed in the Charities Act 2008 s 2(2) (see PARA 2), rather than the advancement of religion: see s 2(4)(a); and PARAS 2, 56.

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(iv) The Advancement of Health or the Saving of Lives

35. Advancement of health and the saving of lives.

A purpose is charitable under the fourth statutory description of charitable purposes if it is for the advancement of health or the saving of lives¹, which purposes include the prevention or relief of sickness, disease or human suffering², as well as the promotion of health³. Accordingly there is considerable overlap with the relief of those in need by reason of age, ill-health and disability⁴.

The relief of sickness extends beyond the treatment or provision of care, such as a hospital, to the provision of items, services and facilities to ease the suffering or assist the recovery of people who are sick, convalescent, disabled or infirm or to provide comforts for patients⁵. The relief of illness may be through complementary and alternative medicine⁶. Institutions that provide rescue services, such as lifeboats, mountain rescue, fire, ambulance, air ambulance and first aid services, or which assist the work of the police and rescue services may be charitable under this category⁷ in addition to being charitable for the promotion of the efficiency of the police, fire and rescue services or ambulance services⁸.

As a purpose previously falling under the fourth head of charity⁹, there must be a benefit to a definite community or section of the community¹⁰; it must be identifiable as such¹¹; it must be of appreciable importance¹²; and it must not depend on any personal relationship to a particular individual or individuals¹³. Where the benefit does not extend to the whole community, the section of the community must be substantial enough to give the trust a public character¹⁴. What is a sufficiently substantial class may vary according to the nature of the benefit to be provided¹⁵, and it is particularly important to keep in mind the necessary element of general public utility¹⁶.

1 See the Charities Act 2006 s 2(2)(d); and PARA 2.

2 See the Charities Act 2006 s 2(3)(b); and PARA 2.

3 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 25. As to the Charity Commission's publications see PARA 542.

4 See under the Charities Act 2006 s 2(2)(j); and see PARA 43.

5 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 26.

6 See *Application for Registration of NFSH Charitable Trust Ltd*, Decision of the Charity Commissioners, 15 August 2002, at para 7.7 in which it was held that promotion of spiritual healing was charitable as being for the relief of stress and the promotion of health, provided that the healer did not claim to diagnose illness, make unfounded claims to cure any illness and the purpose of the healing was to promote relief of illness rather than to promote the well-being of healthy people.

7 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 28.

8 See under the Charities Act 2006 s 2(2)(l); see PARAS 2, 45.

9 See the fourth division mentioned by Lord Macnaghten in *Income Tax Special Purposes Comrs v Pemsell* [1891] AC 531 at 583, HL, per Lord Macnaghten: see PARA 46.

10 *Verge v Somerville* [1924] AC 496 at 499, PC.

11 *Keren Kayemeth Le Jisroel Ltd v IRC* [1932] AC 650, HL; *Williams' Trustees v IRC* [1947] AC 447, [1947] 1 All ER 513, HL.

12 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 65, [1947] 2 All ER 217 at 233, HL, per Lord Simonds; *Verge v Somerville* [1924] AC 496 at 499, PC.

13 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 306, [1951] 1 All ER 31 at 34, HL, per Lord Simonds; *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA.

14 See PARA 8.

15 *IRC v Baddeley* [1955] AC 572 at 615, [1955] 1 All ER 525 at 549, HL, per Lord Somervell of Harrow.

16 *IRC v Baddeley* [1955] AC 572 at 590, [1955] 1 All ER 525 at 532, HL, per Viscount Simonds.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(v) The Advancement of Citizenship or Community Development/36. Advancement of citizenship or community development.

(v) The Advancement of Citizenship or Community Development

36. Advancement of citizenship or community development.

A purpose is charitable under the fifth statutory description of charitable purposes if it is for the advancement of citizenship or community development¹, which includes urban and rural regeneration² and the promotion of civil responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities³. Activities which are charitable under this category include good citizenship award schemes⁴, Scout and Guide groups⁵ and social investment⁶. The promotion of 'community capacity building'⁷, which the Charity Commission defines as developing the capacity and skills of the members of a community in such a way that they are better able to identify, and help meet, their needs and to participate more fully in society⁸, for example by providing training or instruction or developing transferable skills such as team-working and problem solving⁹, is also charitable.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit¹⁰.

1 See the Charities Act 2006 s 2(2)(e); and PARA 2.

2 See the Charities Act 2006 s 2(3)(c)(i); and PARA 2. See also *RR2: The Promotion of Urban and Rural Regeneration* (Charity Commission, March 1999). As to the Charity Commission's publications see PARA 542.

3 See the Charities Act 2006 s 2(3)(c)(ii); and PARA 2. See also the *Report of the Charity Commissioners for England and Wales for 1990* (HC Paper (1990-91) no 362) App A(f) (to improve the efficiency of charities by the provision to charitable organisations of advice and assistance in the field of information technology is charitable); and the *Report for 1969* (HC Paper (1969-70) no 276) para 20.

4 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 30.

5 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 30. These purposes are also charitable as being for the advancement of education: see *Re Webber, Barclays Bank Ltd v Webber* [1954] 3 All ER 712, [1954] 1 WLR 1500, following *Re Alexander* (1932) Times, 30 June; see PARA 22 note 21.

6 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 30. See also the *Decision of the Charity Commissioners to Register the Charity Bank Ltd as a Charity*, Decision of the Charity Commission, 17 April 2002. As to decisions of the Charities Commission see PARA 542.

7 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 30. See also *RR5: The Promotion of Community Capacity Building* (Charity Commission, November 2000).

8 See *RR5: The Promotion of Community Capacity Building* (Charity Commission, November 2000) para 7.

9 See *RR5: The Promotion of Community Capacity Building* (Charity Commission, November 2000) Annex A15.

10 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(vi) The Advancement of the Arts, Culture, Heritage or Science/37. Advancement of the arts, culture, heritage or science.

(vi) The Advancement of the Arts, Culture, Heritage or Science

37. Advancement of the arts, culture, heritage or science.

A purpose is charitable under the sixth statutory description of charitable purposes if it is for the advancement of the arts, culture, heritage or science¹. Facilities the provision of which is charitable include a library², museum³, public hall⁴, reading room⁵, botanical garden⁶, observatory⁷, or a war memorial of a useful character⁸, where the facilities are open to the public⁹. A gift to the National Trust is charitable¹⁰, as is a gift to promote the finding of the original manuscripts of plays attributed to Shakespeare¹¹. There is clearly considerable scope for overlap between the advancement of the arts, culture, heritage or science and the advancement of education, and purposes may fall under both descriptions¹².

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit¹³.

1 See the Charities Act 2006 s 2(2)(f); and PARA 2. The concepts of 'arts', 'culture', 'heritage' and 'science' are undefined, but 'science' has been held to embrace a wide and ascertainable range of subjects: see *Weir v Crum-Brown* [1908] AC 162 at 168-169, HL, per Lord Macnaghten.

2 *Abbott v Fraser* (1874) LR 6 PC 96; *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638 at 642 per Stirling J.

3 *British Museum Trustees v White* (1826) 2 Sim & St 594; *Re Allsop, Gell v Carver* (1884) 1 TLR 4; *Re Holburne, Coates v Mackillop* (1885) 53 LT 212; and see *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638.

4 *Re Spence, Barclays Bank Ltd v Stockton-on-Tees Corpn* [1938] Ch 96, [1937] 3 All ER 684.

5 *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638.

6 *Townley v Bedwell* (1801) 6 Ves 194; *Harrison v Southampton Corpn* (1854) 2 Sm & G 387.

7 *Harrison v Southampton Corpn* (1854) 2 Sm & G 387.

8 *Murray v Thomas* [1937] 4 All ER 545; cf *Re Lord Mayor of Belfast's Air Raid Distress Fund* [1962] NI 161.

9 This does not, therefore, apply where the intention is to benefit the founder and subscribers only: *Thomson v Shakespear* (1860) John 612 at 616 per Page Wood V-C (affd 1 De GF & J 399 (museum)); *Carne v Long* (1860) 2 De GF & J 75 (library); *Re Prevost, Lloyds Bank Ltd v Barclays Bank Ltd* [1930] 2 Ch 383 (London Library); and see *Re Russell Institution, Figgins v Baghino* [1898] 2 Ch 72 (literary and scientific institution); *Re Jones, Clegg v Ellison* [1898] 2 Ch 83 (horticultural society); *Re Pitt Rivers, Scott v Pitt Rivers* [1902] 1 Ch 403, CA (museum and pleasure ground).

10 *Re Verrall, National Trust for Places of Historic Interest or Natural Beauty v A-G* [1916] 1 Ch 100; and see *Re Spensley's Will Trusts, Barclays Bank Ltd v Staughton* [1952] Ch 886, [1952] 2 All ER 49; revsd [1954] Ch 233, [1954] 1 All ER 178, CA. As to the National Trust see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq.

11 *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669, [1964] 3 All ER 46. See also PARA 24.

12 For example, gifts to learned societies and institutions which advance the arts or science can be charitable under the second statutory description of charitable purposes: see PARA 26.

13 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(vii) The Advancement of Amateur Sport/38. Advancement of amateur sport.

(vii) The Advancement of Amateur Sport

38. Advancement of amateur sport.

A purpose is charitable under the seventh statutory description of charitable purposes if it is for the advancement of amateur sport¹. Dangerous sports which involve risks which go far beyond the usual risks of injury associated with energetic physical exercise, such as boxing or so-called 'extreme' sports, may not be conducive to physical health and institutions seeking charitable status will need to show medical evidence of the risks involved in the sport and details of the steps taken to minimise the dangers to personal safety if they are to be considered charitable under this purpose².

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit³.

For an amateur sports club to be charitable, open membership is essential if it is to meet the requirement of public benefit⁴, save where reasonable restrictions are necessary to enable the club to operate effectively⁵. A club may operate a waiting list for membership on a first come, first served basis where it is oversubscribed⁶, and is not required to provide facilities for the elderly or disabled⁷. For membership to be open, membership subscriptions must be affordable for the majority of the community the club serves⁸, there must be no test of skill for admission⁹, any clothing and equipment needed must be affordable¹⁰, and the extent to which facilities and resources are devoted to competitive play must not damage the principle of genuinely open membership¹¹. If the true purpose of a club is competitive success, and not community participation, it is not charitable¹².

A registered sports club¹³ established for charitable purposes is to be treated as not being so established, and accordingly cannot be a charity¹⁴.

1 See the Charities Act 2006 s 2(2)(g); and PARA 2. 'Sport' is defined as meaning sport or games which promote health by involving physical or mental skill or exertion: see s 2(3)(d); and PARA 2. The Charity Commission's current position apparently continues to be that sport must be capable of improving physical health and fitness (see *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 7(ii)) but this can no longer stand. Accordingly, the following activities may be sports notwithstanding the Charity Commission's assertion to the contrary: angling; ballooning; billiards, pool and snooker; crossbow; rifle and pistol shooting; flying; gliding; motor sports; parachuting. As to the Charity Commission's publications see PARA 542.

2 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) paras 22-24. If an organisation uses a dangerous sport as a means of achieving a different charitable purpose, the benefit to the public of the organisation's object may outweigh the dangers inherent in the sport: see *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 25.

3 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

4 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 14. Although these guidelines are directed towards community amateur sports clubs, which are no longer charitable (see the text to notes 8-11), they remain relevant to other amateur sports clubs pending revision: see the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, March 2007) para 23; *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 36.

5 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) paras 14-17.

6 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 16. See also note 5.

7 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 21. There should, however, be no bar to participation by the elderly or disabled where the sport is suitable and the club's facilities can reasonably be used by these groups: para 21. See also note 5.

8 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 18. See also note 5.

9 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 19. See also note 5.

10 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 26. See also note 5.

11 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 27. See also note 5.

12 See *RR11: Charitable Status and Sport* (Charity Commission, April 2003) para 28. See also note 5.

13 A 'registered sports club' means a club for the time being registered under the Finance Act 2002 Sch 18 (relief for community amateur sports club) (see **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 291): Charities Act 2006 s 5(5).

14 Charities Act 2006 s 5(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(viii) The Advancement of Human Rights, Conflict Resolution or Reconciliation, or the Promotion of Religious or Racial Harmony or Equality and Diversity/39. Advancement of human rights.

(viii) The Advancement of Human Rights, Conflict Resolution or Reconciliation, or the Promotion of Religious or Racial Harmony or Equality and Diversity

39. Advancement of human rights.

A purpose is charitable under the eighth statutory description of charitable purposes if it is for the advancement of human rights¹. The advancement of human rights includes the following: monitoring abuses of human rights²; obtaining redress for victims of human rights abuse³; relieving need among the victims of human rights abuse or their dependants⁴; research into human rights issues⁵; educating the public about human rights⁶; technical advice to governments and others on human rights matters⁷; contributing to the sound administration of human rights law⁸; commenting on proposed human rights legislation⁹; raising awareness of human rights issues¹⁰; promoting popular support for human rights¹¹; advocating the adoption of, and compliance with, international and regional codes of human rights, and the incorporation of human rights into domestic law¹²; and promoting respect for human rights by individuals and corporations¹³.

It is charitable to pursue the elimination of infringements of human rights¹⁴, and to encourage a government to respect its own human rights legislation¹⁵. Where a country's domestic law is inconsistent with international standards, a charity may campaign for legislation or changes in government policy provided that political means are not the dominant method by which the organisation will pursue its charitable objects¹⁶.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit¹⁷.

1 See the Charities Act 2006 s 2(2)(h); and PARA 2.

2 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 17. As to the Charity Commission's publications see PARA 542.

- 3 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 18.
- 4 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 19. This purpose may also be charitable under the tenth statutory description of purposes as being for the relief of those in need by reason of disadvantage: see the Charities Act 2006 s 2(2)(j); and PARAS 2, 43.
- 5 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 20. This purpose may also be charitable under the second statutory description of purposes as being for the advancement of education: see the Charities Act 2006 s 2(2)(b); see PARAS 2, 22 et seq.
- 6 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 21. This purpose may also be charitable under the second statutory description of purposes as being for the advancement of education: see the Charities Act 2006 s 2(2)(b); see PARAS 2, 22 et seq.
- 7 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 22.
- 8 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 23.
- 9 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 24.
- 10 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 25.
- 11 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) paras 26-28.
- 12 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) paras 29-30.
- 13 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 31.
- 14 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 32. Means of pursuing the elimination of infringement of human rights include: the procurement of the abolition of torture by all lawful means; the procurement of the abolition of torture, extra-judicial killing and disappearance; and the elimination of slavery, the slave trade and other forms of unlawful forced labour, where this does not involve trying to change the domestic law of any country: para 32.
- 15 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) para 18.
- 16 See *RR12: The Promotion of Human Rights* (Charity Commission, January 2005) paras 31, 33-36. Where political means are the dominant method by which the purpose is pursued, the purpose is not charitable as being for a political purpose: paras 31, 33-36. As to political purposes see PARA 67.
- 17 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(viii) The Advancement of Human Rights, Conflict Resolution or Reconciliation, or the Promotion of Religious or Racial Harmony or Equality and Diversity/40. Advancement of conflict resolution or reconciliation.

40. Advancement of conflict resolution or reconciliation.

A purpose is charitable under the eighth statutory description of charitable purposes if it is for the advancement of conflict resolution or reconciliation¹. The advancement of conflict resolution and reconciliation includes: the resolution of international conflicts and relieving the suffering, poverty and distress arising through conflict on a national or international scale by identifying the causes of the conflict and seeking to resolve such conflict²; the promotion of restorative justice³; and purposes directed towards mediation, conciliation or reconciliation as between persons, organisations, authorities or groups involved or likely to become involved in dispute or inter-personal conflict⁴.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit⁵.

1 See the Charities Act 2006 s 2(2)(h); and PARA 2.

2 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 40. See also *Application for Registration of Charity of Concordis International Trust*, Decision of the Charity Commissioners, 23 July 2004. As to the Charity Commission's publications see PARA 542. As to decisions of the Charities Commission see PARA 542.

3 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 40. See also *Application for Registration of Restorative Justice Consortium Ltd*, Decision of the Charity Commissioners, 15 January 2003.

4 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 40. See also *Report of the Charity Commissioners for England and Wales for 1983* (HC Paper (1983-84) no 447) paras 28-34 (family conciliation services charitable); and *Application for Registration of Charity of Concordis International Trust*, Decision of the Charity Commissioners, 23 July 2004 (mediating with parties to national or international conflict charitable).

5 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(viii) The Advancement of Human Rights, Conflict Resolution or Reconciliation, or the Promotion of Religious or Racial Harmony or Equality and Diversity/41. Promotion of religious or racial harmony or equality and diversity.

41. Promotion of religious or racial harmony or equality and diversity.

A purpose is charitable under the eighth statutory description of charitable purposes if it is for the promotion of religious or racial harmony or equality and diversity¹. Although there was old authority that strengthening the bonds of unity between a Commonwealth country and the mother country², or for appeasing racial feeling between sections of a community, or for promoting closer understanding between the English and Swedish peoples³ were not charitable, the Charity Commission had for some time prior to the Charities Act 2006 accepted that promoting good race relations, endeavouring to eliminate discrimination on grounds of race and encouraging equality of opportunity between persons of different racial groups are *prima facie* charitable purposes⁴.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit⁵.

1 See the Charities Act 2006 s 2(2)(h); and PARA 2.

2 *Re Strakosch, Temperley v A-G* [1949] Ch 529, [1949] 2 All ER 6, CA. See also *Re Koeppler Will Trusts, Barclays Bank Trust Co Ltd v Slack* [1984] Ch 243, [1984] 2 All ER 111; revsd [1986] Ch 423, [1985] 2 All ER 869, CA; and PARA 67.

3 *Anglo-Swedish Society v IRC* (1931) 47 TLR 295.

4 *Report of the Charity Commissioners for England and Wales for 1983* (HC Paper (1983-84) no 447) paras 15-20. This report, prepared before the decision in *Re Koeppler Will Trusts, Barclays Bank Trust Co Ltd v Slack* [1984] Ch 243, [1984] 2 All ER 111; revsd [1986] Ch 423, [1985] 2 All ER 869, CA, took the view that the authority of *Re Strakosch, Temperley v A-G* [1949] Ch 529, [1949] 2 All ER 6, CA was undermined by the race relations legislation. The Inland Revenue did not challenge the view of the Charity Commissioners.

5 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(ix) The Advancement of Environmental Protection or Improvement/42. Advancement of environmental protection or improvement.

(ix) The Advancement of Environmental Protection or Improvement

42. Advancement of environmental protection or improvement.

A purpose is charitable under the ninth statutory description of charitable purposes if it is for the advancement of environmental protection or improvement¹. The advancement of environmental protection or improvement includes the conservation of a particular animal, bird, or other species or wildlife in general; a specific plant species, habitat or area of land, including areas of natural beauty and scientific interest; flora, fauna and the environment generally². It is charitable to preserve vegetables valuable to man³. Independent expert evidence that is authoritative and objective may be required to show that a particular species, land or habitat to be conserved is worthy of conservation⁴. The promotion of sustainable development and biodiversity is charitable, as is the promotion of recycling and sustainable waste management and research projects into the use of renewable energy sources⁵.

There is old authority to the effect that a trust to establish a refuge for animals and birds of all kinds is not charitable where that refuge is closed to the public as not affording any advantage to animals useful to mankind, or any protection from cruelty to animals generally⁶. However, if an organisation can make out a case for the limiting or excluding of physical access to a site or property, it can still satisfy the public benefit requirement by putting in place alternative means of informing the public about the charity and its activities⁷, for example through: (1) access to part of the site if access to the whole is harmful; (2) facilities to view the site from the outside; (3) viewing through video cameras, telescopes or other equipment, (4) computer simulations and internet sites; (5) TV and radio coverage; or (6) videos, books, discussions and lectures⁸.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit⁹.

1 See the Charities Act 2006 s 2(2)(i); and PARA 2.

2 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 43. Cf *A-G v Whorwood* (1750) 1 Ves Sen 534 at 536 per Lord Hardwicke LC (not charitable to feed sparrows). Conservation purposes relating to fauna may also be charitable under the eleventh statutory description of purposes as being for the advancement of animal welfare: see the Charities Act 2006 s 2(2)(k); and PARA 44. As to the Charity Commission's publications see PARA 542.

3 *London University v Yarrow* (1857) 1 De G & J 72, 26 LJ Ch 430.

4 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 43.

5 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 44.

6 *Re Grove-Grady, Plowden v Lawrence* [1929] 1 Ch 557, [1929] All ER Rep 158, CA compromised on appeal sub nom *A-G v Plowden* [1931] WN 89, 171 LT Jo 308, HL. See also *Re Glyn's Will Trusts* (1953) Times, 28 March (sanctuary for birds and wild flowers open to such members of the public as the trustees deem fit not charitable).

7 See *RR9: Preservation and Conservation* (Charity Commission, February 2001) Annex paras A19-A21. See also *Re Sawtell* [1978] 2 NSWLR 200 at 211, NSW SC, per Holland J.

8 See *RR9: Preservation and Conservation* (Charity Commission, February 2001) Annex paras A20.

9 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(x) The Relief of those in Need/43. Relief of those in need.

(x) The Relief of those in Need

43. Relief of those in need.

A purpose is charitable under the tenth statutory description of charitable purposes if it is for the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage¹, including relief given by the provision of accommodation or care to such persons².

Purposes for the relief of those in need by reason of youth include the prevention of cruelty to children³ and the gift of a house to be maintained by a local authority as a children's home⁴. However, a gift for the general benefit and general welfare of children has been held not to be exclusively charitable⁵.

Purposes for the relief of those in need by reason of age include: the provision of free cottages for old women of the working classes of the age of 60 or upwards⁶; the maintenance of aged persons in a nursing home⁷. Gifts to the old people over 65 years of a named locality as trustees think best have been upheld as charitable⁸. Previously, aged persons have been held proper objects of charity under a gift not containing any express direction or indication of relief⁹; but it does not appear that the element of relief is necessarily implied in any gift to the aged. Persons not under 50 years of age have been held to be aged¹⁰.

The relief of those in need by reason of ill-health or disability includes a home of rest for those needing it¹¹, and gifts for patients in named hospitals¹², for the benefit of the blind¹³, for the sick and for the wounded¹⁴. Faith-healing may be charitable as being for the relief of ill-health¹⁵. A gift to pay money to the eventual discoverers of the cause of and a cure for cancer was held to be exclusively charitable¹⁶, as have gifts to religious communities having for their object the relief of the sick¹⁷.

There is a clear overlap between the relief of those in need by reason of financial hardship and the relief of poverty¹⁸. Given the low threshold for what constitutes 'poverty', it is difficult to conceive of a purpose which would fall under the tenth statutory description of purposes but not under the first¹⁹.

Other examples of the relief of those in need include the relief of refugees²⁰, a community providing a temporary home of rest and the comfort of friendship to those who need it²¹, funds for the relief of victims of air raids²² or floods²³, and the provision of housing such as almshouses, housing associations and Registered Social Landlords²⁴.

The social relief, resettlement and rehabilitation of persons under a disability or deprivation (including disaster funds) and the relief of unemployment are both charitable²⁵, though the Charity Commission's position is that these purposes fall under the thirteenth statutory description²⁶.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit²⁷.

1 See the Charities Act 2006 s 2(2)(j); and PARA 2.

2 See the Charities Act 2006 s 2(3)(e); and PARA 2.

- 3 *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 572, HL, where, however, Lord Herschell discusses 'charity' in its popular sense.
- 4 *Re Sahal's Will Trusts, Alliance Assurance Co Ltd v A-G* [1958] 3 All ER 428, [1958] 1 WLR 1243.
- 5 *Re Cole, Westminster Bank Ltd v Moore* [1958] Ch 877, [1958] 3 All ER 102, CA.
- 6 *Re Glyn's Will Trusts, Public Trustee v A-G* [1950] 2 All ER 1150n.
- 7 *Re Bradbury, Needham v Reekie* [1950] 2 All ER 1150n, 94 Sol Jo 839.
- 8 *Re Robinson, Davis v Robinson* [1951] Ch 198, [1950] 2 All ER 1148.
- 9 *Re Shepherd, Firman v Shepherd* (1952) unreported (trust to divide income equally among the 21 oldest inhabitants of a locality without a means test).
- 10 *Re Wall, Pomeroy v Willway* (1889) 42 ChD 510. However, the average expectation of life has increased since 1889, and a more advanced age might now be held to be the minimum.
- 11 Cf the preamble to the Charitable Uses Act 1601 (43 Eliz 1 c 4 (1601)) (now wholly repealed: see PARA 2 note 25; and PARA 46) and see *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687; *Re James, Grenfell v Hamilton* [1932] 2 Ch 25; *Re Chaplin, Neame v A-G* [1933] Ch 115; but see *Re Morris' Will Trusts* (1962) Times, 25 January, where a gift to provide a home of rest was held not to be intended to relieve the impotent.
- 12 *Re Roadley, Iveson v Wakefield* [1930] 1 Ch 524.
- 13 *Re Elliott, Raven v Nicholson* (1910) 102 LT 528; and *Re Fraser, Yeates v Fraser* (1883) 22 ChD 827.
- 14 *Re Hillier, Dauncey v Finch and A-G* [1944] 1 All ER 480.
- 15 *Re Kerin* (1966) Times, 24 May. However, on appeal the order in this case was wholly set aside by consent.
- 16 *Re Watson's Settlement Trusts, Dawson v Reid* [1959] 2 All ER 676, [1959] 1 WLR 732.
- 17 *Cocks v Manners* (1871) LR 12 Eq 574; *Re Delany, Conoley v Quick* [1902] 2 Ch 642, and cases there cited; *Re Banfield, Lloyds Bank Ltd v Smith* [1968] 2 All ER 276, [1968] 1 WLR 846.
- 18 Ie under the Charities Act 2002 s 2(2)(a): see PARAS 2, 14.
- 19 See PARA 15.
- 20 *Re Morrison, Wakefield v Falmouth* (1967) 111 Sol Jo 758.
- 21 *Re Banfield, Lloyds Bank Ltd v Smith* [1968] 2 All ER 276, [1968] 1 WLR 846.
- 22 *Re Lord Mayor of Belfast's Air Raid Distress Fund* [1962] NI 161; and see *Re Hobourn Aero Components Ltd's Air Raid Distress Fund, Ryan v Forrest* [1946] Ch 194 at 200, 202, [1946] 1 All ER 501 at 506, 507, CA, obiter per Lord Greene MR.
- 23 *Re North Devon and West Somerset Relief Fund Trusts, Baron Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260.
- 24 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 46. As to housing associations see **HOUSING** vol 22 (2006 Reissue) PARA 11. As to Registered Social Landlords see **HOUSING** vol 22 (2006 Reissue) PARA 66 et seq. As to the Charity Commission's publications see PARA 542.
- 25 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 52.
- 26 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, August 2009) para 52. As to the thirteenth statutory description see the Charities Act 2002 s 2(2)(m), 2(4)(a); and PARAS 2, 46.
- 27 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(xi) The Advancement of Animal Welfare/44. Advancement of animal welfare.

(xi) The Advancement of Animal Welfare

44. Advancement of animal welfare.

A purpose is charitable under the eleventh statutory description of charitable purposes if it is for the advancement of animal welfare¹. Trusts for the protection or benefit of animals, whether useful to man or not, are charitable, as being calculated to promote human morality by encouraging kindness, discouraging cruelty and stimulating humane sentiments to the benefit of mankind², unless outweighed by consequences detrimental to the public benefit³.

Accordingly the following gifts are charitable: gifts to such institutions as the RSPCA⁴, a home for lost dogs⁵ or for starving and forsaken cats⁶, a veterinary college⁷ and vegetarian societies⁸, or to a periodical devoted to propaganda against cruelty to animals⁹, or for the welfare of cats and kittens needing care and attention¹⁰, or for the establishment of an animals' hospital¹¹, humane slaughterhouses¹², a fund to provide rewards for policemen for helping to bring to justice cases of cruelty to animals¹³, and to preserve animals valuable to man¹⁴. Animal sanctuaries may be charitable under this category as well as under the ninth statutory description of charitable purposes as being for the advancement of environmental protection or improvement¹⁵.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit¹⁶.

1 See the Charities Act 2006 s 2(k); and PARA 2.

2 *Re Wedgwood, Allen v Wedgwood* [1915] 1 Ch 113, CA; *Re Moss, Hobrough v Harvey* [1949] 1 All ER 495; *Re Green's Will Trusts, Fitzgerald-Hart v A-G* [1985] 3 All ER 455. Cf *Re Joy, Purday v Johnson* (1888) 60 LT 175; and see *A-G v Whorwood* (1750) 1 Ves Sen 534 at 536 per Lord Hardwicke LC (trust to feed sparrows: not charitable). Trusts for the prevention of cruelty to animals abroad are charitable: *Armstrong v Reeves* (1890) 25 LR Ir 325; *Re Jackson, Bell v Adlam* (1910) Times, 11 June. Gifts for the benefit of specific animals are not charitable: *Re Dean, Cooper-Dean v Stevens* (1889) 41 ChD 552; *Re Howard, Oakley v Aldridge* (1908) Times, 30 October. As to the enforceability of such gifts see PARA 60 note 25; and **TRUSTS** vol 48 (2007 Reissue) PARA 607.

In appropriate circumstances, such protection or benefit may be extended to animals which are dangerous or harmful to man, despite Kennedy LJ's dicta otherwise in *Re Wedgwood, Allen v Wedgwood: Application for Registration of the Wolf Trust (formerly known as Wild Bite)*, Decision of the Charity Commissioners, 30 January 2003, para 4.2. As to decisions of the Charities Commission see PARA 542.

3 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 41, 49, [1947] 2 All ER 217 at 219, 224, HL, per Lord Wright, and at 72-73 and 237 per Lord Simonds (anti-vivisection society not charitable, overruling *Re Foveaux, Cross v London Anti-Vivisection Society* [1895] 2 Ch 501); applied in *Animal Defence and Anti-Vivisection Society v IRC* (1950) 66 (pt 2) TLR 1091. See also *Hanchett-Stamford v A-G* [2008] EWHC 330 (Ch), [2009] Ch 173, [2008] 4 All ER 323, (prevention of cruelty to performing animals where this necessitates a change in the law is not charitable).

4 *Tatham v Drummond* (1864) 4 De GJ & Sm 484; *Armstrong v Reeves* (1890) 25 LR Ir 325 (Society of Carlsruhe for the Protection of Animals).

5 *Re Douglas, Obert v Barrow* (1887) 35 ChD 472, CA; *Adamson v Melbourne and Metropolitan Board of Works* [1929] AC 142 at 148, PC.

6 *Swifte v A-G for Ireland (No 2)* [1912] 1 IR 133.

7 *London University v Yarrow* (1857) 1 De G & J 72 at 80 per Lord Cranworth LC.

8 *Re Cranston, Webb v Oldfield* [1898] 1 IR 431, CA; *Re Slatter, Howard v Lewis* (1905) 21 TLR 295.

- 9 *Marsh v Means* (1857) 3 Jur NS 790; and see *Re Cranston, Webb v Oldfield* [1898] 1 IR 431 at 443, CA, per Lord Ashbourne LC (lectures).
- 10 *Re Moss, Hobrough v Harvey* [1949] 1 All ER 495.
- 11 *London University v Yarrow* (1857) 1 De G & J 72.
- 12 *Tatham v Drummond* (1864) 4 De GJ & Sm 484; and see *Re Wedgwood, Allen v Wedgwood* [1915] 1 Ch 113 at 116, CA, per Lord Cozens-Hardy MR; *Re Winton* (1953) Times, 31 January.
- 13 *Re Herrick, Colohan v A-G* (1918) 52 ILT 213. Cf *Re Hollywood, Smyth v A-G* (1917) 52 ILT 51.
- 14 *London University v Yarrow* (1857) 1 De G & J 72.
- 15 See the Charities Act 2006 s 2(2)(i); and PARAS 2, 42.
- 16 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(xii) The Promotion of the Efficiency of the Armed Forces of the Crown, or of the Efficiency of the Police, Fire and Rescue Services or Ambulance Services/45. Efficiency of armed forces and of the police, fire, rescue or ambulance services.

(xii) The Promotion of the Efficiency of the Armed Forces of the Crown, or of the Efficiency of the Police, Fire and Rescue Services or Ambulance Services

45. Efficiency of armed forces and of the police, fire, rescue or ambulance services.

A purpose is charitable under the twelfth statutory description of charitable purposes if it is for the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services¹. Gifts tending to this end include a gift for the benefit of a volunteer corps², for teaching shooting³, for the maintenance of a library for a regimental officers' mess⁴ or for the mess generally⁵, to form a regimental fund for the promotion of sport⁶, to provide a prize to be competed for by cadets⁷, for the upkeep of bedrooms and attendance for the men of a regiment⁸, for the training of boys to become officers in the navy or mercantile marine⁹, for promoting the defence of the United Kingdom from attack by hostile aircraft¹⁰, to provide a lifeboat¹¹, to the Royal National Lifeboat Institution¹². The principle does not extend to a gift that can be applied solely for the benefit of former members of the navy, army or air force¹³, however, a gift to two institutions, one for sailors, the other for soldiers, has been held to be a charitable gift¹⁴.

For a purpose to be charitable it must also conform to the established requirements with regard to public benefit¹⁵.

1 See the Charities Act 2006 s 2(2)(l); and PARA 2. See also *Re Good, Harington v Watts* [1905] 2 Ch 60 at 66 per Farwell J; *IRC v City of Glasgow Police Athletic Association* [1953] AC 380 at 391, [1953] 1 All ER 747 at 749, HL, per Lord Normand: the association was held not to be established exclusively for that purpose, and not to be charitable because the recreation of members of the association was one of its main purposes. As to the meaning of 'Fire and rescue services' see PARA 2 note 19.

2 *Re Lord Stratheden and Campbell, Alt v Lord Stratheden and Campbell* [1894] 3 Ch 265. Property given for the use of a volunteer corps may, however, be regulated by statutory provisions, in which case it is not held on charitable trusts: *Re Edis's Trust, Campbell-Smith v Davies* [1972] 2 All ER 769, [1972] 1 WLR 1135.

3 *Re Stephens, Giles v Stephens* (1892) 8 TLR 792. See also *Charitable Status: Rifle and Pistol Clubs for Instruction and Practice in Shooting (The City of London Rifle and Pistol Club and the Burnley Rifle Club)* Decisions of the Charity Commissioners (1993) vol 1 p 4.

4 *Re Good, Harington v Watts* [1905] 2 Ch 60. The decision on the facts, though not the ratio, in this case and in *Re Gray, Todd v Taylor* [1925] Ch 362, was doubted by Lord Normand in *IRC v City of Glasgow Police Athletic Association* [1953] AC 380 at 391, [1953] 1 All ER 747 at 749, HL.

5 *Re Donald, Moore v Somerset* [1909] 2 Ch 410 at 422 per Warrington J.

6 *Re Gray, Todd v Taylor* [1925] Ch 362. See note 4.

7 *Re Barker, Sherrington v Dean and Chapter of St Paul's Cathedral* (1909) 25 TLR 753.

8 *Re Barker, Sherrington v Dean and Chapter of St Paul's Cathedral* (1909) 25 TLR 753.

9 *Re Corbyn, Midland Bank Executor and Trustee Co Ltd v A-G* [1941] Ch 400, [1941] 2 All ER 160.

10 *Re Driffill, Harvey v Chamberlain* [1950] Ch 92, [1949] 2 All ER 933.

11 *Johnston v Swann* (1818) 3 Madd 457.

12 *Thomas v Howell* (1874) LR 18 Eq 198; *Re Richardson, Shuldham v Royal National Lifeboat Institution* (1887) 56 LJCh 784; *Re David, Buckley v Royal National Lifeboat Institution* (1889) 41 ChD 168 (affd (1890) 43 ChD 27, CA).

13 *Re Good, Harington v Watts* [1905] 2 Ch 60 (gift for old officers of regiment); *Re Meyers, London Life Association v St George's Hospital* [1951] Ch 534, [1951] 1 All ER 538 (gift for welfare, benefit or assistance of members of navy, army or air force, whether past, present or future, or their wives or children).

14 *Re Smith, Blyth v A-G* (1920) 36 TLR 416, CA.

15 See PARA 35 notes 9-16. As to public benefit generally see PARA 6 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(2) PARTICULAR CHARITABLE PURPOSES/(xiii) Other Charitable Purposes Prior to the Charities Act 2006/46. Charitable purposes prior to the Charities Act 2006 remain charitable.

(xiii) Other Charitable Purposes Prior to the Charities Act 2006

46. Charitable purposes prior to the Charities Act 2006 remain charitable.

A purpose is charitable under the thirteenth statutory description of purposes if it does not fall under any of the twelve statutory descriptions of charitable purposes¹ but was recognised as charitable under charity law² as in force immediately before 1 April 2008³.

Prior to that date, charitable purposes were decided by reference to the preamble to the Charitable Uses Act 1601⁴, which contained a varied list of purposes⁵, and made it clear that at least those purposes were charitable⁶. The objects enumerated in the preamble were as follows: the relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning and free schools and scholars of universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance for houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of fifteens⁷, setting out of soldiers⁸ and other taxes.

The list was not exhaustive⁹; but to decide whether a beneficial purpose was beneficial in a way which the law regarded as charitable, it was the practice of the courts to refer to the list in the

preamble. The objects there enumerated and all others 'which by analogies are deemed within its spirit and intendment' were charitable in the legal sense¹⁰. No other objects were in law charitable¹¹; however, when a purpose had been proved to be of general public utility or beneficial to the community, it was held to be charitable unless there was some reason for holding that it was not within the spirit and intendment of the preamble¹². The purposes named in the preamble, which received a very wide construction¹³, were regarded only as instances of charities¹⁴.

Notwithstanding that neither the ancient statute nor the preamble were on the statute book immediately before 1 April 2008¹⁵, it was still the general law that a purpose was not charitable unless it was within the spirit and intendment of the preamble¹⁶. The preamble never had any statutory operation, and the vast body of case law derived from it was unaffected by its repeal¹⁷. Charitable purposes were classified into four principal 'heads' of charity¹⁸: (1) the relief of poverty; (2) the advancement of education; (3) the advancement of religion; and (4) other purposes beneficial to the community not falling under any of the preceding heads, including certain additional purposes were declared to be charitable by the Recreational Charities Act 1958¹⁹. All claims to bring a purpose under the head of charity had to assert that it came within one or more of these four divisions²⁰.

1 le under the Charities Act 2006 s 2(2)(a)-(l): see PARAS 2, 14-45.

2 As to the meaning of 'charity law' see PARA 2 note 20.

3 See the Charities Act 2006 s 2(2)(m), (4)(a), (8); and PARA 2. 1 April 2008 is the day on which the Charities Act 2006 s 2 came into force: see the Charities Act 2006 (Commencement No 4, Transitional Provisions and Savings) Order 2008, SI 2008/945.

4 43 Eliz 1 c 4 (1601) (now wholly repealed: see PARA 2 note 25).

5 *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 581, HL, per Lord Macnaghten; *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 467, CA, per Lindley LJ; *Re Foveaux, Cross v London Anti-Vivisection Society* [1895] 2 Ch 501 at 504, per Chitty J; *Re Nottage, Jones v Palmer* [1895] 2 Ch 649 at 656, CA, per Rigby LJ.

6 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 64-65, [1947] 2 All ER 217 at 233, HL, per Lord Simonds.

7 'Fifteens' or 'fifteenths' were taxes on personalty.

8 See PARA 48.

9 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 64, [1947] 2 All ER 217 at 233, HL, per Lord Simonds.

10 *Morice v Bishop of Durham* (1804) 9 Ves 399 at 405, per Grant MR (on appeal (1805) 10 Ves 522); *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 581, HL, per Lord Macnaghten; *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 467, CA, per Lindley LJ; *Verge v Somerville* [1924] AC 496 at 502, PC.

11 *Gilmour v Coats* [1949] AC 426 at 442, [1949] 1 All ER 848 at 852, HL, per Lord Simonds (unless they are declared to be so by statute; see eg the Recreational Charities Act 1958; and PARAS 46-49).

12 *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA. But see *Barralet v A-G* [1980] 3 All ER 918, sub nom *Re South Place Ethical Society, Barralet v A-G* [1980] 1 WLR 1565, where Dillon J cast some doubt on this proposition.

13 *Cocks v Manners* (1871) LR 12 Eq 574 at 585, per Wickens V-C.

14 *London University v Yarrow* (1857) 1 De G & J 72 at 79 per Lord Cranworth LC; *Re Foveaux, Cross v London Anti-Vivisection Society* [1895] 2 Ch 501 at 504 per Chitty J.

15 le the day on which the Charities Act 2006 s 2 (see PARA 2) came into force: see note 3.

16 See *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corp*n [1968] AC 138, [1967] 3 All ER 215, HL.

17 *Incorporated Council of Law Reporting for England and Wales v A-G* [1971] Ch 626 at 644, [1971] 1 All ER 436 at 445 per Foster J; affd [1972] Ch 73, [1971] 3 All ER 1029, CA.

18 This is the so-called *Pemsel* classification: see *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 583, HL, per Lord Macnaghten. The classification was taken from the argument of Sir Samuel Romilly in *Morice v Bishop of Durham* (1805) 10 Ves 522 at 532 per Lord Eldon LC. See also *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 466, CA, per Lindley LJ.

19 See PARAS 52-55.

20 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 52, [1947] 2 All ER 217 at 226, HL, per Lord Porter. Many charitable purposes do not fit neatly within a single category: *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669 at 678, [1964] 3 All ER 46 at 51 per Wilberforce J; cf *Trustees of City of Belfast YMCA v Northern Ireland Valuation Comr* [1969] NI 3, CA.

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47. General benefit of community.

A gift in general terms for the benefit of a country or district, not indicating a specific purpose, is charitable, apparently on the principle that it is impliedly for purposes recognised by the law as charitable¹. Examples are gifts 'to my country England'²; and gifts, whether general or for specific purposes, for the benefit of the inhabitants of a county³, town⁴, ward⁵ or parish⁶, and gifts in general terms for the benefit of the inhabitants, or a class of the inhabitants⁷, of particular localities⁸, for example a borough⁹, city¹⁰, town¹¹, village¹², or parish¹³, or the occupiers of certain cottages on a manor¹⁴, or the free inhabitants of ancient tenements in a particular place¹⁵. However, a trust for defined purposes which are not charitable is not rendered charitable by the fact that the area of benefit is a particular locality¹⁶.

1 *Williams' Trustees v IRC* [1947] AC 447 at 459, [1947] 1 All ER 513 at 521, HL, per Lord Simonds; and see *Re Strakosch, Temperley v A-G* [1949] Ch 529, [1949] 2 All ER 6, CA. The leading case is *Goodman v Saltash Corp*n (1882) 7 App Cas 633, HL (applied in *Peggs v Lamb* [1994] Ch 172, [1994] 2 All ER 15), the decision in which was later described by Lord Ashbourne in *Harris v Earl of Chesterfield* [1911] AC 623 at 633, HL, as a splendid effort of equitable imagination. See also *Alfred F Beckett Ltd v Lyons* [1967] Ch 449, [1967] 1 All ER 833, CA.

2 *Re Smith, Public Trustee v Smith* [1932] 1 Ch 153, CA, explaining dicta in *A-G v National Provincial and Union Bank of England* [1924] AC 262, HL.

3 *A-G v Earl of Lonsdale* (1827) 1 Sim 105.

4 *Wrexham Corp*n *v Tamplin* (1873) 21 WR 768; *A-G v Dartmouth Corp*n (1883) 48 LT 933; *Re Baynes, Public Trustee v Leven Corp*n [1944] 2 All ER 597 (gift to Common Good Fund of town council in Scotland); but see PARA 3.

5 *Baylis v A-G* (1741) 2 Atk 239.

6 *West v Knight* (1669) 1 Cas in Ch 134; *Dolan v Macdermot* (1868) 3 Ch App 676; *A-G v Lord Hotham* (1823) Turn & R 209; *A-G v Earl of Lonsdale* (1827) 1 Sim 105; *A-G v Webster* (1875) LR 20 Eq 483; *Re St Bride's, Fleet Street, Church or Parish Estate* (1877) 35 ChD 147n; *Re St Botolph Without Bishopsgate Parish Estates* (1887) 35 ChD 142; *Re St Alphage, London Wall* (1888) 59 LT 614; *Re St Stephen, Coleman Street, Re St Mary the Virgin, Aldermanbury* (1888) 39 ChD 492; *Re Parish of St Nicholas Acons* (1889) 60 LT 532; *Re Norton's Will Trusts, Lightfoot v Goldson* [1948] 2 All ER 842 (any use trustees think best for benefit of church and parish, but preferably for certain purposes that might, however, prove impracticable).

7 Eg the native inhabitants of Dacca (*Mitford v Reynolds* (1842) 1 Ph 185), the freemen of a borough (*Re Norwich Town Close Estate Charity* (1888) 40 ChD 298, CA), or the schoolchildren of a town (*Re Mellody, Brandwood v Haden* [1918] 1 Ch 228), or, possibly, the 21 oldest inhabitants of a locality without a means test (*Re Shepherd, Firman v Shepherd* (1952) unreported; see PARA 43).

8 See *Goodman v Saltash Corpn* (1882) 7 App Cas 633 at 642, HL, per Lord Selborne LC; *Peggs v Lamb* [1994] Ch 172, [1994] 2 All ER 15.

9 *Re Norwich Town Close Estate Charity* (1888) 40 ChD 298, CA; and see *Stanley v Norwich Corpn* (1887) 3 TLR 506; but cf *Prestney v Colchester Corpn and A-G* (1882) 21 ChD 111 at 119 per Hall V-C. See also *Re Harding, Gibbs v Harding* [2007] EWHC 3 (Ch), [2008] Ch 235, [2007] 1 All ER 747.

10 *A-G v Carlisle Corpn* (1828) 2 Sim 437; *Mitford v Reynolds* (1842) 1 Ph 185.

11 *A-G v Cashel Corpn* (1842) 3 Dr & War 294; *A-G v Galway Corpn* (1829) 1 Mol 95; *Shillington v Portadown Urban Council* [1911] 1 IR 247.

12 *Wright v Hobert* (1723) 9 Mod Rep 64.

13 *Re Mann, Hardy v A-G* [1903] 1 Ch 232.

14 *A-G v Meyrick* [1893] AC 1, HL. In *Wilson v Barnes* (1886) 38 ChD 507, CA, a gift for the benefit of the copyhold tenants of a manor was held charitable; but copyhold tenure has been abolished (see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 643).

15 *Goodman v Saltash Corpn* (1882) 7 App Cas 633, HL.

16 *Re Sanders' Will Trusts, Public Trustee v McLaren* [1954] Ch 265, [1954] 1 All ER 667; and see *Re Gwyon, Public Trustee v A-G* [1930] 1 Ch 255 at 261 per Eve J, applying Lord Shaw's dictum in the Scottish case of *Houston v Burns* [1918] AC 337 at 349, HL; *Re King, Henderson v Cranmer* [1931] WN 232; *D'Aguiar v Guyana IRC* (1970) 49 ATC 33, PC. However, a gift for public purposes in a town may be charitable even though, in general, public purposes are not exclusively charitable: see *Re Spence, Barclays Bank Ltd v Stockton-on-Tees Corpn* [1938] Ch 96, [1937] 3 All ER 684; *Re Allen, Hargreaves v Taylor* [1905] 2 Ch 400. See also *A-G of the Cayman Islands v Wahr Hansen* [2001] 1 AC 75, [2000] 3 All ER 642, PC.

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48. Objects of practical utility.

Objects of general public utility or benefit of a practical kind mentioned in the preamble to the Charitable Uses Act 1601¹ include the repair of bridges, ports, highways and similar instances². These, together with many purposes which have been held charitable by analogy, would normally be provided now by some public authority as public works³, services or facilities⁴, and some benefits which would be charitable have been to some extent superseded in other ways⁵, but gifts for such purposes do not thereby cease to be charitable. The provision of the means for public recreation is charitable⁶, as is a gift to the Royal Humane Society⁷. The preamble includes the aid or ease of poor inhabitants concerning payment of taxes. Analogous cases beneficial to the community, all of which are charitable⁸, are gifts for the benefit of the country to be applied by the Chancellor of the Exchequer⁹, or for relief of taxes¹⁰, or in reduction of the National Debt¹¹, or in reduction of rates¹².

The preservation of public order¹³, the defence of the country (such as trusts for national or local defence)¹⁴ and the rehabilitation of ex-offenders and the prevention of crime¹⁵ are also charitable.

1 43 Eliz 1 c 4 (1601) (now wholly repealed: see PARA 2 note 25).

2 See PARA 46.

3 As to 'public works' see the view taken earlier in *Dolan v Macdermot* (1867) LR 5 Eq 60 at 62 per Lord Romilly MR; affd (1868) 3 Ch App 676.

4 Eg repairing highways (*A-G v Governors of Harrow School* (1754) 2 Ves Sen 551; *A-G v Day* [1900] 1 Ch 31); building bridges (*Forbes v Forbes* (1854) 18 Beav 552); protecting the sea coast against encroachment (*A-G v Brown* (1818) 1 Swan 265; *Wilson v Barnes* (1886) 38 ChD 507, CA); providing a fire brigade for the benefit of a locality in 1876 (*Re Wokingham Fire Brigade Trusts, Martin v Hawkins* [1951] Ch 373, [1951] 1 All ER 454); providing a town with water (*Jones v Williams* (1767) Amb 651), light (*A-G v Heelis* (1824) 2 Sim & St 67 at 76-77 per Leach V-C; *A-G v Eastlake* (1853) 11 Hare 205), or other improvements (*Howse v Chapman* (1799) 4 Ves 542; *A-G v Heelis*; *A-G v Brown*), or with fortifications (*A-G v Carlisle Corpn* (1828) 2 Sim 437; *A-G v Dartmouth Corpn* (1883) 48 LT 933); or building a courthouse (Duke on Charitable Uses 109, 136), or workhouse (*A-G v Blizzard* (1855) 21 Beav 233; *Re St Botolph Without Bishopsgate Parish Estates* (1887) 35 ChD 142; *Webster v Southey* (1887) 36 ChD 9; but cf *Burnaby v Barsby* (1859) 4 H & N 690); or providing a cemetery (*A-G v Blizzard*), or cheap and sanitary methods of disposing of the dead (*Scottish Burial Reform and Cremation Society Ltd v Glasgow Corpn* [1968] AC 138, [1967] 3 All ER 215, HL); but see *Auckland Harbour Board v IRC* [1959] NZLR 204. In *Richmond-upon-Thames London Borough Council v A-G* (1982) 81 LGR 156 Warner J declined to decide the question whether the provision of municipal offices or of a town hall could be a valid charitable purpose.

5 The relief of poverty has been a national responsibility since the National Assistance Act 1948 came into force (see **SOCIAL SERVICES AND COMMUNITY CARE**). See also *Richmond Corpn v A-G* [1965] RA 117; revsd sub nom *Re Richmond Parish Charity Lands* [1965] RA 343, CA.

6 *Re Hadden, Public Trustee v More* [1932] 1 Ch 133; *Shillington v Portadown Urban Council* [1911] 1 IR 247 (providing the means of obtaining healthy recreation, including, inter alia, music and instruments for the town band); *Re Morgan, Cecil-Williams v A-G* [1955] 2 All ER 632, [1955] 1 WLR 738; and see *IRC v Baddeley* [1955] AC 572 at 589, [1955] 1 All ER 525 at 532, HL, per Viscount Simonds, at 615 and 549 per Lord Somervell of Harrow, and at 594 and 535 per Lord Reid; *Alexandra Park Trustees v Haringey London Borough* (1967) 66 LGR 306; *Brisbane City Council v A-G for Queensland* [1979] AC 411, [1978] 3 All ER 30, PC; *Liverpool City Council v A-G* (1992) Times, 1 May. This may possibly not apply if the facilities are not open air facilities: see *Northern Ireland Valuation Comr v Lurgan Borough Council* [1968] NI 104 at 125, CA, per Lord Macdermott CJ, and see also at 134 per Curran LJ (there cannot be a valid charity for recreation or other leisure-time occupation which does not comply with the Recreational Charities Act 1958 (see PARAS 52-55)). The Charity Commissioners (now the Charity Commission) have not accepted the 'open air' point, and have held that the provision of a public ice skating rink is charitable apart from the Recreational Charities Act 1958, and also under it: *Report of the Charity Commissioners for England and Wales for 1984* (HC Paper (1984-85) no 394) paras 19-25.

7 *Beaumont v Oliveira* (1869) 4 Ch App 309.

8 A similar analogy (to the 'setting out of soldiers' in the preamble to the statute of Elizabeth I: see PARA 46) was applied in *Re Good, Harington v Watts* [1905] 2 Ch 60 (gift to maintain library and purchase plate for officers' mess).

9 *Nightingale v Goulbourn* (1848) 2 Ph 594.

10 *A-G v Bushby* (1857) 24 Beav 299.

11 *Thellusson v Woodford* (1799) 4 Ves 227 (affd (1805) 11 Ves 112, HL); *Newland v A-G* (1809) 3 Mer 684; *Ashton v Lord Langdale* (1851) 4 De G & Sm 402 at 403 per Shadwell V-C; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 544, HL, per Lord Halsbury LC.

12 *Doe d Preece v Howells* (1831) 2 B & Ad 744; and see *A-G v Limerick Corpn* (1817) 6 Dowl 136.

13 *IRC v City of Glasgow Police Athletic Association* [1953] AC 380 at 391, [1953] 1 All ER 747 at 749, HL, per Lord Normand. Note also the promotion of the efficiency of the police, fire and rescue services or ambulance services, with which there may be overlap in individual cases: see the Charities Act 2002 s 2(2)(l); and PARAS 2, 45.

14 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, March 2007) para 38.

15 See the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, March 2007) para 38.

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49. Other public purposes.

It is charitable to promote industry and commerce for the public benefit¹; to further the sound development and administration of the law by the dissemination of accurate reports of judicial decisions²; to encourage good domestic servants³, good housewifery and horticulture⁴; and to promote agriculture⁵. Among funds which have been held to be charitable are funds to promote marriage among the Jews⁶, for the repatriation of men from New South Wales who had served in the First World War⁷, for reclaiming fallen women⁸, for the assistance or support of unmarried mothers⁹, and for promoting the spiritual and moral welfare of seamen in port¹⁰. A gift for a peal of bells to be rung to commemorate the restoration of the monarchy has been held charitable¹¹; and the erection of a monument¹², not of the donor¹³, or memorial¹⁴ may perhaps be charitable, as may the promotion of certain patriotic purposes¹⁵.

1 *Re Town and Country Planning Act 1947, Crystal Palace Trustees v Minister of Town and Country Planning* [1951] Ch 132, [1950] 2 All ER 857n.

2 *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA; *Incorporated Council of Law Reporting for the State of Queensland v Comr of Taxation* (1971) 45 ALJR 552, Aust HC.

3 *Reeve v A-G* (1843) 3 Hare 191; *Loscombe v Wintringham* (1850) 13 Beav 87. Cf *Re Patten, Westminster Bank v Carlyon* [1929] 2 Ch 276 (staff Christmas fund at a club: not charitable).

4 *Re Pleasants, Pleasants v A-G* (1923) 39 TLR 675.

5 *IRC v Yorkshire Agricultural Society* [1928] 1 KB 611, CA; *Re Pleasants, Pleasants v A-G* (1923) 39 TLR 675; *Brisbane City Council v A-G for Queensland* [1979] AC 411, [1978] 3 All ER 30, PC; and see *Re Clifford* as reported in (1912) 81 LJCh 220 at 222 per Swinfen Eady J (restocking of a river with fish might be for the benefit of the community). But a fund to provide cheap loans to assist planters and agriculturalists is not charitable unless the purposes of the loans themselves are restricted to the promotion of agriculture: *Hadaway v Hadaway* [1955] 1 WLR 16, PC. See also PARA 42.

6 *Re Cohen, National Provincial and Union Bank of England Ltd v Cohen* (1919) 36 TLR 16.

7 *Verge v Somerville* [1924] AC 496, PC.

8 *Mahony v Duggan* (1880) 11 LR Ir 260.

9 *Re Andrae Estate, Sims v Public Trustee* (1967) 61 WWR 182 (Alta).

10 *Finch v Poplar Borough Council* (1967) 66 LGR 324; and see *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52 (holiday centre for miners, their wives and families in need of a change of air).

11 *Re Pardoe, McLaughlin v A-G* [1906] 2 Ch 184. Cf *Re Arber, Taylor v Shelton* (1919) Times, 13 December (in commemoration of testator's death: not charitable).

12 The Charity Commissioners (now the Charity Commission) have treated some such cases as charitable, eg the Wellington Monument in Somerset and the Cobden Obelisk at Midhurst. See the comments on the statement on the text made by the Charity Commissioners in their *Report for 1981* (HC Paper (1981-82) no 363) paras 68-70, in relation to registration of the Mountbatten Statue Appeal trust. As to the Charity Commissioners see PARA 538.

13 *Re Endacott, Corpe v Endacott* [1960] Ch 232, [1959] 3 All ER 562, CA. The fact that the memorial was to be useful did not save it. See also PARA 54.

14 The cases were considered in *Re Lord Mayor of Belfast's Air Raid Distress Fund* [1962] NI 161, and the question was also discussed in *Murray v Thomas* [1937] 4 All ER 545. In each of those cases the memorial was

to be of a useful character, such as a building or hall, but Clauson J in *Murray v Thomas* was inclined to the view that a war memorial might be charitable even though it was not of a useful character.

15 *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, March 2007) para 38.

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50. Spread of particular doctrines.

The promulgation of particular doctrines or principles not subversive of morality or otherwise pernicious¹, and not in furtherance of the principles of a particular political party², nor involving pressure on the legislature to achieve a political object in changing the law of the land³, may be charitable, as, for instance, Conservative principles combined with mental and moral improvement⁴, Socialism⁵, kindness to animals⁶, temperance⁷, 'extending the knowledge of those doctrines in the various branches of literature to which I have turned my attention and pen, in order to ascertain what appeared to be truth, and to teach it to those who would listen'⁸, or carrying on the teachings of Rudolf Steiner, which are directed to the mental or moral improvement of man⁹. The promotion of ethical standards of conduct of work and compliance with the law may be a valid charitable purpose¹⁰.

The question whether the promulgation of a particular doctrine or principle will or may benefit the public must be answered by the court by forming an opinion upon the evidence before it¹¹. The same consideration applies to the dissemination of information useful to the community¹².

1 See PARA 65. An inquiry may be ordered into the nature of the doctrines: *Russell v Jackson* (1852) 10 Hare 204.

2 *Bonar Law Memorial Trust v IRC* (1933) 49 TLR 220 (gift to commemorate a Conservative leader by an educational centre for subjects deemed desirable to governing body composed of leader and chairman ex officio and other members of Conservative party: not charitable), distinguishing *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638. See also PARA 67.

3 See PARA 67. See *Re Bushnell, Lloyds Bank Ltd v Murray* [1975] 1 All ER 721, [1975] 1 WLR 1596.

4 *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638 at 642 per Stirling J. Cf *Re Jones, Public Trustee v Earl of Clarendon* (1929) 45 TLR 259 (Primrose League: not a charity).

5 *Russell v Jackson* (1852) 10 Hare 204 (subject to its being found on inquiry not to be illegal; the Socialist party was not formed until 1904). See *Pare v Clegg* (1861) 29 Beav 589.

6 *Marsh v Means* (1857) 3 Jur NS 790.

7 *Re Hood, Public Trustee v Hood* [1931] 1 Ch 240 at 250, CA, per Lord Hanworth MR, and at 252-253, CA, per Romer LJ; *IRC v Falkirk Temperance Café Trust* 1927 SC 261, Ct of Sess. Distinguish *IRC v Temperance Council of Christian Churches of England and Wales* (1926) 136 LT 27 (promotion of temperance mainly by political means: not charitable).

8 *Thompson v Thompson* (1844) 1 Coll 381 at 395 per Shadwell V-C (where it was admitted that the testator's writings contained nothing irreligious, illegal or immoral).

9 *Re Price, Midland Bank Executor and Trustee Co Ltd v Harwood* [1943] Ch 422, [1943] 2 All ER 505.

10 See *Charitable Status: Public Concern at Work* (1993) Decisions of the Charity Commissioners (1994) vol 2 p 5; and the *Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006* (Charity Commission, March 2007) para 38. As to the Charity Commission's publications see PARA 542.

11 *National Anti-Vivisection Society v IRC* [1948] AC 31, [1947] 2 All ER 217, HL; approving observations in *Re Hummeltenberg*, *Beatty v London Spiritualistic Alliance Ltd* [1923] 1 Ch 237 at 242 per Russell J, which were adopted in *Re Grove-Grady*, *Plowden v Lawrence* [1929] 1 Ch 557, CA, and overruling the dictum of Chitty J in *Re Foveaux*, *Cross v London Anti-Vivisection Society* [1895] 2 Ch 501, that where the merits of a particular object are controversial the court stands neutral.

12 See *Re Besterman's Will Trusts* (21 January 1980, unreported); *McGovern v A-G* [1982] Ch 321, [1981] 3 All ER 493.

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51. Miners' welfare trusts.

Until 1 April 2010¹, where trusts declared before 17 December 1957 required or purported to require property to be held for the purpose of activities which are social welfare activities within the meaning of the Miners' Welfare Act 1952², and at 17 December 1957 the whole or part of the property held on those trusts or of any property held with that property³ represented an application of money standing to the credit of the miners' welfare fund⁴ or money provided by the Coal Industry Social Welfare Organisation⁵, those trusts are to be treated as if they were and always had been charitable⁶. As from 1 April 2010, such a trust is no longer charitable unless it constitutes a charity in accordance with the Charities Act 2006⁷.

1 The date on which the repeal of the Recreational Charities Act 1958 s 2 (see the text and note 2-7) comes into force: see the Charities Act 2006 (Commencement No 4, Transitional Provisions and Savings) Order 2008, SI 2008/945, art 2A, Sch 1A (as added by SI 2009/841). For transitional provisions and savings see the Charities Act 2006 (Commencement No 4, Transitional Provisions and Savings) Order 2008, SI 2008/945 arts 4, 5, 10 (amended by SI 2009/841); and the Charities Act 2006 s 75(3), Sch 10, para 2.

2 See the Miners' Welfare Act 1952 s 16(1) (prospectively repealed); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87. As to representation of employee organisations amongst trustees see s 5; PARA 193; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 88.

3 Property held on the same trusts as other property was deemed to be held with it, even if it was vested in different trustees: Recreational Charities Act 1958 s 2(2) (s 2 repealed as from 1 April 2010 by the Charities Act 2006 ss 5(1), (3), 75(2), Sch 9).

4 This fund was wound up under the provisions of the Miners' Welfare Act 1952 s 2(1) (prospectively repealed): see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.

5 See the Miners' Welfare Act 1952 s 2 (prospectively repealed); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.

6 Recreational Charities Act 1958 s 2(1) (as repealed: see note 3). See also **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87. For savings under s 3 see PARA 55. See also *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52.

7 The Charities Act 2006 s 1(1) (see PARA 1): see the Charities Act 2006 Sch 10 para 2.

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(xiv) Recreational Charities

52. Recreation and other leisure-time occupation.

It is deemed by statute to be, and, subject to certain provisions¹, always to have been, charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare². This applies in particular to the provision of facilities at village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for the purpose of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity³. The activities do not have to have an educational element⁴.

¹ It is subject to the provisions of the Recreational Charities Act 1958: see s 1(1). As to whether trusts for this type of purpose are or can be charitable if they do not comply with the provisions of the Recreational Charities Act 1958 see PARA 48 note 6; and *Northern Ireland Valuation Comr v Lurgan Borough Council* [1968] NI 104 at 125, 134, 166, CA.

² Recreational Charities Act 1958 s 1(1). See also the Charities Act 2006 s 2(4)(a); and PARA 2. As to the interests of social welfare see s 1(2); and PARA 53. The Recreational Charities Act 1958, which binds the Crown (s 5), is not to be taken to restrict the purposes which are to be regarded as charitable independently of it: s 3(1). As to the application of the Recreational Charities Act 1958 to Scotland and Northern Ireland see s 6(2), (3) (s 6(2) substituted and s 6(3) added by the Charities Act 2006 Sch 8, para 39).

³ Recreational Charities Act 1958 s 1(3). There seems to be no reason and little scope for applying the ejusdem generis rule of construction to s 1(1) by reference to this provision, even though it is not expressed to be without prejudice to the generality of s 1(1).

⁴ See *Charitable Status: Fairfield (Croydon) Ltd--The Recreation Charities Act 1958 (1995)* Decisions of the Charity Commissioners (1997) vol 5 p 7.

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53. The interests of social welfare.

The statutory requirement that the facilities be provided in the interests of social welfare¹ cannot be satisfied if the 'basic conditions' are not met². The basic conditions are: (1) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended³; and (2) that either those persons have need of the facilities by reason of their youth, age, infirmity or disability, poverty, or social and economic circumstances⁴, or the facilities are to be available to members of the public at large or to male, or to female, members of the public at large⁵.

¹ It is the requirement under the Recreational Charities Act 1958 s 1(1); see PARA 52. The Recreational Charities Act 1958 contains no definition of 'social welfare'. There are decisions on the words 'social welfare' under the Rating and Valuation (Miscellaneous Provisions) Act 1955 s 8 (repealed; replaced by the General Rate Act 1967 s 40, (itself repealed and replaced by the Local Government Finance Act 1988 s 47): see PARA 430), but these may be misleading: see *Northern Ireland Valuation Comr v Lurgan Borough Council* [1968] NI 104 at 126, 151, CA.

² Recreational Charities Act 1958 s 1(2) (s 1(2) substituted, and s 1(2A) added by the Charities Act 2006 s 5(1), (2)).

³ Recreational Charities Act 1958 s 1(2A)(a) (as added: see note 2). The subsection appears to contemplate that there may be a primary and a secondary class of beneficiaries: see, (discussing the Recreational Charities Act 1958 s 1(2) pre-substitution, but still of interest) *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR

52. The provision was discussed in *IRC v McMullen* [1978] 1 All ER 230, [1978] 1 WLR 664; affd [1979] 1 All ER 588, [1979] 1 WLR 130, CA, but revsd on other grounds [1981] AC 1, [1980] 1 All ER 884, HL. At first instance Walton J said that the persons for whom the facilities are primarily intended must be to some extent and in some way deprived persons, and this view was shared by the majority in the Court of Appeal. The dissenting judgment of Bridge LJ was, however, said to be clearly correct in the Scottish case of *Guild v IRC* [1992] 2 AC 310, [1992] 2 All ER 10, HL (a tax case where the English law of charities was applicable as part of the law of Scotland). It suffices that the facilities are provided with the object of improving the conditions of life for members of the community generally.

Provision of bar facilities at a rugby club does not improve conditions of life for those for whom the facilities were primarily intended: *Charitable Status: North Tawton Rugby Union Football Club (1995)* Decisions of the Charity Commissioners (1997) vol 5 p 7. Provision of an internet café for the use of the local community living or working in an area of social and economic deprivation can be charitable under the 1958 Act: *Application for Registration of Community Server*, Decision of the Charity Commissioners, 15 September 2003. As to decisions of the Charities Commission see PARA 542.

4 Recreational Charities Act 1958 s 1(2A)(b)(i) (as added: see note 2).

5 Recreational Charities Act 1958 s 1(2A)(b)(ii) (as added: see note 2).

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54. Public benefit and recreational charities.

Nothing in the general provision as to recreational and similar trusts¹ is to be taken to derogate from the principle that, to be charitable, a trust or institution must be for the public benefit². Although the Recreational Charities Act 1958 lays down certain requirements of its own as to the section of the public which is to benefit³, these do not seem to exclude the application of the test of benefit for a sufficient section of the public, and they operate subject to this overriding principle⁴.

1 le nothing in the Recreational Charities Act 1958 s 1: see PARAS 52-53.

2 Recreational Charities Act 1958 s 1(1) proviso. As to the meaning of 'for the public benefit' in this context see *Wynn v Skegness UDC* [1966] 3 All ER 336 at 345, [1967] 1 WLR 52 at 63 per Ungood-Thomas J.

3 See PARA 53.

4 See *Charitable Status: North Tawton Rugby Union Football Club (1995)* Decisions of the Charity Commissioners (1997) vol 5 p 7. See also PARA 8.

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55. Past transactions.

Although the Recreational Charities Act 1958, which came into force on 13 March 1958 when it received the royal assent, is declaratory and therefore retrospective in effect, it does not apply to make charitable any trust, or to validate any disposition, of property if, before 17 December 1957, that property, or any property representing or forming part of it, or any income arising from any such property, has been paid or conveyed to, or applied for the benefit of, the persons entitled by reason of the invalidity of the trust or disposition¹.

The Act does not affect any order made or judgment given, whether before or after 13 March 1958, in legal proceedings begun before 17 December 1957²; and nothing in the Act requires anything properly done before 17 December 1957, or anything done or to be done in pursuance of a contract entered into before that day, to be treated for any purpose as wrongful or ineffectual³.

Nothing in the Act requires anything to be treated, for the purposes of any enactment, as having been charitable at a time before 13 March 1958, so as to invalidate anything done or any determination given before that date⁴.

1 Recreational Charities Act 1958 s 3(2)(a).

2 Recreational Charities Act 1958 s 3(2)(b).

3 Recreational Charities Act 1958 s 3(2)(c).

4 Recreational Charities Act 1958 s 3(3) (amended by the Statute Law (Repeals) Act 2004).

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(xv) Purposes Analogous to, or within the Spirit of, another Charitable Purpose

56. Recognising new charitable purposes.

The Charities Act 2006 establishes as charitable: (1) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within the Charities Act 2006 or the existing law¹; and (2) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within (1)².

Historically, in order to find whether a novel purpose was charitable the courts considered that it must fall within the 'spirit and intendment' of the preamble to the Charitable Uses Act 1601³ and sought to find an analogy with purposes mentioned in the preamble itself⁴, or with purposes previously held to be within its spirit and intendment⁵. Even in the absence of such analogy, objects beneficial to the public, or of public utility, were *prima facie* within the spirit and intendment of the preamble and, in the absence of any ground for holding that they are outside its spirit and intendment, were therefore charitable in law⁶. The effect of the Charities Act 2006 is to preserve this general approach whilst removing the need to find that a novel purpose falls within the spirit and intendment of the 1601 Act⁷.

For a novel purpose to be recognised as charitable, it must satisfy the public benefit requirement⁸.

1 See the Charities Act 2006 ss 2(2)(m), 2(4)(b); and PARA 2. As to purposes falling within the Charities Act 2006 and the existing law see PARA 2 et seq.

2 See the Charities Act 2006 ss 2(2)(m), 2(4)(c); and PARA 2.

3 43 Eliz 1 c 4 (1601). Now wholly repealed: see PARA 2 note 25; and PARA 46. See *Re Macduff*, *Macduff v Macduff* [1896] 2 Ch 451 at 466-467, CA, per Lindley LJ, and at 473-475 per Rigby LJ; *Langham v Peterson* (1903) 87 LT 744; *Re Good, Harington v Watts* [1905] 2 Ch 60 at 66 per Farwell J; *A-G v National Provincial and Union Bank of England* [1924] AC 262, HL; *General Medical Council v IRC* (1928) 97 LJB 578, CA.

4 See PARA 46.

5 See the cases cited in note 3; and *Williams' Trustees v IRC* [1947] AC 447, [1947] 1 All ER 513, HL; *Re Strakosch, Temperley v A-G* [1949] Ch 529, [1949] 2 All ER 6, CA; *Incorporated Council of Law Reporting for England and Wales v A-G* [1971] Ch 626, [1971] 1 All ER 436.

6 *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73 at 88, 95, 104, [1971] 3 All ER 1029 at 1036, CA, per Russell LJ, at 1042 per Sachs LJ, and at 1048 per Buckley LJ; *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corpn* [1968] AC 138, [1967] 3 All ER 215, HL; *IRC v McMullen* [1979] 1 All ER 588, [1979] 1 WLR 130, CA (revsd, without discussing this point [1981] AC 1, [1980] 1 All ER 884, HL). In *Barralet v A-G* [1980] 3 All ER 918, sub nom *Re South Place Ethical Society, Barralet v A-G* [1980] 1 WLR 1565, however, Dillon J doubted whether this more generous approach is permissible in the light of earlier House of Lords decisions such as *Williams' Trustees v IRC* [1947] AC 447, [1947] 1 All ER 513, HL. See also *A-G v Heelis* (1824) 2 Sim & St 67; *Brisbane City Council v A-G for Queensland* [1979] AC 411 at 422, [1978] 3 All ER 30 at 33, PC.

7 See the Charities Act 2006 ss 2(2)(m), 2(4); and PARA 2.

8 See PARA 6 et seq.

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(xvi) Charitable Purposes Abroad

57. Choice of law.

If in an English court the question arises of the validity of a gift by will for purposes which may be charitable but which are to be carried out entirely abroad, the question is determined, in the case of a gift of immovable property, by the law of the country in which the property is situated¹ and, in the case of movable property, by the law of the country in which the testator was domiciled at the date of his death². Formerly the English law as to gifts for superstitious uses³ was applied to gifts to be applied abroad⁴ even though the gifts were valid according to the foreign law⁵, but English rules as to mortmain and perpetuities were not so applied⁶.

1 *Re Hoyles, Row v Jagg* [1911] 1 Ch 179, CA (mortgages on land in Ontario); *Philipson-Stow v IRC* [1961] AC 727, [1960] 3 All ER 814, HL (land in South Africa). As to the distinction between immovables and movables see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 380 et seq.

2 *Re Levick's Will Trusts, Ffennell v IRC* [1963] 1 All ER 95, [1963] 1 WLR 311. In some old charity cases the gift has apparently been tested both by English and by foreign law: *Thompson v Thompson* (1844) 1 Coll 381. As to domicile see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

3 See PARA 63.

4 *De Garcin v Lawson* (1798) 4 Ves 433n.

5 *Re Elliott, Elliott v Elliott* [1891] WN 9.

6 *Fordyce v Bridges* (1848) 2 Ph 497 at 515 per Lord Cottenham LC (perpetuity); *Oliphant v Hendrie* (1784) 1 Bro CC 571; *Mackintosh v Townsend* (1809) 16 Ves 330 (mortmain); though see also *A-G v Mill* (1827) 3 Russ 328; affd (1831) 2 Dow & Cl 393, HL; and cf *Jewish National Fund Inc v Royal Trust Co and Richter* [1965] SCR 784, 53 DLR (2d) 577, Can SC.

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58. Test for validity under English law.

If the validity of a gift falls to be determined under English domestic law, the test is not necessarily the same in all cases as for a gift to be applied in England. It is well established that trusts for charitable purposes generally¹, for the relief of the poverty or those in need² or for the advancement of education³, religion⁴ or animal welfare⁵ abroad are valid under English law. The fact that the activities of a charity are to be exercised abroad does not make it non-charitable if it otherwise satisfies the tests⁶.

However, not all purposes which are charitable in England would be charitable if they were to be carried out abroad⁷. Gifts for some purposes previously falling under the fourth head of charity⁸ have been upheld⁹, but public policy might prevent the recognition, as being charitable under English domestic law, of a gift for the improvement of the army of a foreign state¹⁰. There is also authority that the reduction of the national debt of a foreign state is not charitable¹¹.

The test which should be applied in these cases has never been formulated by an English court, but in Australia the test is whether the purpose is beneficial to the foreign community and not inimical to the general concept of legal charity as understood by the local law¹².

1 *Re Vagliano, Vagliano v Vagliano* (1905) 75 LJCh 119.

2 *Eg Ironmongers' Co v A-G* (1844) 10 Cl & Fin 908, HL; *Re Robinson, Besant v German Reich* [1931] 2 Ch 122; *Re Geck, Freund v Steward* (1893) 69 LT 819, CA; *Re Niyazi's Will Trusts* [1978] 3 All ER 785, [1978] 1 WLR 910. This applies even if inhabitants of a country of alien ideology are to benefit: *Re Burnham* (1958) 17 DLR (2d) 298 (BC); and cf *Re Robinson, Besant v German Reich* at 128 per Maugham J. As to charitable trusts for the relief of poverty or the relief of those in need see PARAS 14-21.

3 *Re Davis' Trusts* (1889) 61 LT 430; *Re Shaw's Will Trusts, National Provincial Bank Ltd v National City Bank Ltd* [1952] Ch 163, [1952] 1 All ER 49. As to charitable trusts for the advancement of education see PARAS 22-27.

4 *Income Tax Special Purposes Comrs v Pemsell* [1891] AC 531, HL. As to charitable trusts for the advancement of religion see PARAS 28-34.

5 *Armstrong v Reeves* (1890) 25 LR Ir 325. As to charitable trusts for the advancement of animal welfare see PARA 44.

6 *Keren Kayemeth Le Jisroel Ltd v IRC* [1931] 2 KB 465 at 477, CA, per Lord Hanworth MR (affd without considering this point [1932] AC 650, HL); *Re Robinson, Besant v German Reich* [1931] 2 Ch 122.

7 *Camille and Henry Dreyfus Foundation Inc v IRC* [1954] Ch 672 at 684, [1954] 2 All ER 466 at 471, CA, per Evershed MR, and at 704 and 485 per Jenkins LJ; affd without considering this point [1956] AC 39, [1955] 3 All ER 97, HL.

8 *Ie the fourth division mentioned by Lord Macnaghten in Income Tax Special Purposes Comrs v Pemsell* [1891] AC 531 at 583, HL, per Lord Macnaghten: see PARA 46.

9 *Re Lowin* [1967] 2 NSW 140, NSW CA (revsg [1965] NSW 1624) (musical competitions in Vienna); *Re Stone, Perpetual Trustee Co Ltd v Stone* (1970) 91 WN NSW 704 (reclamation and afforestation of land in Israel); *Re Jacobs, Westminster Bank Ltd v Chinn* (1970) 114 Sol Jo 515 (see note 9; and *Report of the Charity Commissioners for England and Wales for 1970* (HC Paper (1970-71) no 409) p 28) (improvement and reclamation of land in Israel); although cf *Jewish National Fund Inc v Royal Trust Co and Richter* [1965] SCR 784, 53 DLR (2d) 577, Can SC.

10 *Camille and Henry Dreyfus Foundation Inc v IRC* [1954] Ch 672 at 684, [1954] 2 All ER 466 at 471, CA, per Evershed MR, and at 704 and 485 per Jenkins LJ; affd without considering this point [1956] AC 39, [1955] 3 All ER 97, HL. Cf *Habershon v Vardon* (1851) 4 De G & Sm 467 (gift held non-charitable as contrary to public policy).

11 *Camille and Henry Dreyfus Foundation Inc v IRC* [1954] Ch 672 at 704, [1954] 2 All ER 466 at 485 per Jenkins LJ; affd without discussing this point [1956] AC 39, [1955] 3 All ER 97, HL. However, the Jubilee Debt Coalition (registered charity 1055675) which pursues the object of the relief of poverty in the third world through debt cancellation has been registered by the Charity Commission. As to the register of charities see PARA 304 et seq.

12 *Re Stone, Perpetual Trustee Co Ltd v Stone* (1970) 91 WN NSW 704 at 717, applying *Re Lowin* [1967] 2 NSW 140, NSW CA; and *Camille and Henry Dreyfus Foundation Inc v IRC* [1954] Ch 672, [1954] 2 All ER 466, CA, affd without considering this point [1956] AC 39, [1955] 3 All ER 97, HL. In the absence of binding decisions, the principles on which the Charity Commission proceeds are set out in the *Report of the Charity Commissioners for England and Wales for 1992* (HC Paper (1992-93) no 651) para 76. See *Re Jacobs, Westminster Bank Ltd v Chinn* (1970) 114 Sol Jo 515, where the point was not discussed in the judgment.

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(3) NON-CHARITABLE PURPOSES

(i) Gifts for Private Charities or Individuals

59. 'Private charities'.

Bequests for private charitable purposes¹ are not recognised by the courts as charitable in the legal sense², except where, by the use of the word 'private', a testator may be said to have drawn a distinction between charities available for all and charities which are restricted to a special class or administered by individuals without the intervention of any corporate organisation³.

1 As to the ambiguity of the expression 'private charity' see *A-G v Pearce* (1740) 2 Atk 87 ('each particular object may be private, but it is the extensiveness which will constitute it a public charity'); *Nash v Morley* (1842) 5 Beav 177; *Hall v Derby Sanitary Authority* (1885) 16 QBD 163 at 171 per Manisty J, and at 173 per Smith J; *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236, CA.

2 *Ommanney v Butcher* (1823) Turn & R 260; *Ellis v Selby* (1836) 1 My & Cr 286 at 292-293 per Lord Cottenham LC; *Nash v Morley* (1842) 5 Beav 177 at 183 per Lord Langdale MR.

3 *Re Sinclair's Trust* (1884) 13 LR Ir 150 at 154 per Porter MR. With this interpretation of the word 'private', it may be possible to reconcile *Waldo v Caley* (1809) 16 Ves 206, where a gift for 'charitable purposes as well of a public as a private nature' was held good; *Johnston v Swann* (1818) 3 Madd 457, where a trust for public and private charities was held good; and *Horde v Earl of Suffolk* (1833) 2 My & K 59, where a trust 'to distribute in charity to private individuals or public institutions' was held good.

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60. Gifts for benefit of individuals.

Gifts for the benefit of particular individuals or a fluctuating body of particular individuals¹, whether named by the testator or to be selected by his trustees² or by any other person³, are never charitable, although they may be upheld as gifts to individuals if the recipients can deal with the capital and income of the gifts as they please⁴. Examples are gifts for persons residing in a particular street⁵, for the children of the testator's tenants on a particular estate⁶, for a city

company whose property was impressed with no charitable trust⁷, for the members of a religious community associated only for the purpose of working out their own salvation⁸, even though involving intercessory prayer and other spiritual exercises affording edification by example⁹, for poor relations limited to statutory next of kin¹⁰, for descendants of named persons¹¹, for the workpeople employed in a certain department of a company's business¹², for employees of a particular company who give financial subscriptions¹³, for all the employees of a public company¹⁴, or for children of past and present employees of a group of companies¹⁵, unless the gifts are to relieve poor employees or past employees of the company or group¹⁶.

The following have also been held not to be charitable: bequests for the benefit of an orphan school kept by an individual substantially at his own expense¹⁷, for the support of any boy or man of a particular surname¹⁸, for keeping a portrait in repair¹⁹, for providing a particular estate with labourers' cottages²⁰, to a livery company for giving a dinner on the testator's birthday to which certain churchwardens should be invited²¹, for a private chapel with chaplain and choristers²², for a Church of England retreat house²³, for the suppression of cruelty to animals by the private prayers of members of a society²⁴, for the maintenance of particular animals²⁵, a gift of a house to provide a commodious residence for the High Commissioner of Australia for the time being²⁶, a devise of a house to a college as a residence for a fellow who should 'sometimes give entertainment to the poor'²⁷, a conveyance of land to be used as a recreation ground for the benefit of the employees of a named company²⁸, for establishing a hotel for distinguished overseas visitors to Stratford-upon-Avon²⁹, and a fund to maintain a building of national architectural interest which was used largely for the private purposes of the body to which it belonged³⁰.

1 *Goodman v Saltash Corp* (1882) 7 App Cas 633 at 650, HL, per Earl Cairns.

2 *Liley v Hey* (1842) 1 Hare 580; *Thomas v Howell* (1874) LR 18 Eq 198; *Edge v Salisbury* (1749) Amb 70.

3 *A-G v Hughes* (1689) 2 Vern 105.

4 *Cocks v Manners* (1871) LR 12 Eq 574; *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110; *Re Smith, Johnson v Bright-Smith* [1914] 1 Ch 937; *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90 at 97 per Eve J. See also *Re Taylor, Midland Bank Executor and Trustee Co Ltd v Smith* [1940] Ch 481, [1940] 2 All ER 637; appeal dismissed by consent [1940] Ch 834, CA (gift to bank staff fund having purposes charitable and non-charitable: not charitable, but valid; *Cocks v Manners* and *Re Clarke, Clarke v Clarke* applied).

5 *Rogers v Thomas* (1837) 2 Keen 8.

6 *Browne v King* (1885) 17 LR Ir 488; and cf *Bristow v Bristow* (1842) 5 Beav 289.

7 *A-G v Haberdashers' Co* (1834) 1 My & K 420; *Re Meech's Will, Butchers' Co v Rutland* [1910] 1 Ch 426.

8 *Cocks v Manners* (1871) LR 12 Eq 574; *Stewart v Green* (1870) IR 5 Eq 470; *Re Delany* (1881) 9 LR Ir 226. See also *Re Delany, Conoley v Quick* [1902] 2 Ch 642, where the objects of the convent were charitable; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; *Re Banfield, Lloyds Bank Ltd v Smith* [1968] 2 All ER 276, [1968] 1 WLR 846.

9 *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL. See also *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; *Re Banfield, Lloyds Bank Ltd v Smith* [1968] 2 All ER 276, [1968] 1 WLR 846.

10 *Edge v Salisbury* (1749) Amb 70, where 'nearest relations' was construed to mean statutory next of kin; *Brunsdon v Woolredge* (1765) Amb 507; *Widmore v Woodroffe* (1766) Amb 636; *Goodinge v Goodinge* (1749) 1 Ves Sen 231; *Doyley v A-G* (1735) 4 Vin Abr 485, pl 16; *Salisbury v Denton* (1857) 3 K & J 529. See also *Gower v Mainwaring* (1750) 2 Ves Sen 87; and PARA 17.

11 *Re Compton, Powell v Compton* [1945] Ch 123, [1945] 1 All ER 198, CA. See also *Davies v Perpetual Trustee Co Ltd* [1959] AC 439, [1959] 2 All ER 128, PC.

12 *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90.

13 *Re Hobourn Aero Components Ltd's Air-Raid Distress Fund, Ryan v Forrest* [1946] Ch 194, [1946] 1 All ER 501, CA.

- 14 *Wernher's Charitable Trust v IRC* [1937] 2 All ER 488. See also *Re Cox, Baker v National Trust Co Ltd* [1955] AC 627, [1955] 2 All ER 550, PC; *Re Koettgen's Will Trusts, Westminster Bank Ltd v Family Welfare Association Trustees Ltd* [1954] Ch 252, [1954] 1 All ER 581; *Caffoor (Trustees of Abdul Gaffoor Trust) v Income Tax Comr, Colombo* [1961] AC 584, [1961] 2 All ER 436, PC.
- 15 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, [1951] 1 All ER 31, HL.
- 16 *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA; following *Re Gosling, Gosling v Smith* (1900) 48 WR 300, and *Re Sir Robert Laidlaw's Will Trusts* (1935, unreported).
- 17 *Clark v Taylor* (1853) 1 Drew 642; cf *Re Marchant, Weaver v Royal Society for the Prevention of Cruelty to Animals* (1910) 54 Sol Jo 425.
- 18 *Laverty v Laverty* [1907] 1 IR 9.
- 19 *Re Gassiot, Fladgate v Vintners' Co* (1901) 70 LJCh 242.
- 20 *Re Tunno, Raikes v Raikes* [1886] WN 154, where the object was the benefit of the owner of the estate.
- 21 *Re Barnett, Waring v Painter Stainers Co* (1908) 24 TLR 788; but see *Re Coxen, McCallum v Coxen* [1948] Ch 747, [1948] 2 All ER 492 (bequest to provide dinner to charity trustees meeting for trust business: charitable as promoting efficient management of charity).
- 22 *Hoare v Hoare* (1886) 56 LT 147 at 150 per Chitty J.
- 23 *Re Warre's Will Trusts, Wort v Salisbury Diocesan Board of Finance* [1953] 2 All ER 99, [1953] 1 WLR 725.
- 24 *Re Joy, Purday v Johnson* (1888) 60 LT 175 at 178 per Chitty J, where the real object contemplated by the testator was the improvement of the members of the society, not the suppression of cruelty to animals, which is a valid charitable purpose. As to trusts for the advancement of animal welfare see PARA 44.
- 25 *Re Dean, Cooper-Dean v Stevens* (1889) 41 ChD 552; *Re Howard, Oakley v Aldridge* (1908) Times, 30 October. If a trust or condition for maintaining specified animals does not violate any rule against remoteness, it is not in itself unlawful. There may be no beneficiary directly interested in seeing to its enforcement; but when a trustee accepts a trust, the execution of which includes a lawful direction, or where an annuitant accepts an annuity subject to a lawful condition, the courts have not abstained from recognising such obligations. In *Pettingall v Pettingall* (1842) 11 LJCh 176 (applied in *Re Thompson, Public Trustee v Lloyd* [1934] Ch 342) the executor was held, upon the construction of the will, to be a beneficial legatee of the surplus of an annual sum which he was directed to apply to the keeping of a mare; the court enforced the obligation by requiring full information to be given when required respecting the animal, by giving liberty to apply, and by an undertaking to maintain the animal comfortably. In *Mitford v Reynolds* (1848) 16 Sim 105 at 116, 120 per Shadwell V-C, there was a charitable bequest, after deducting the annual amount required for the keep of specified horses; the court's order included provision for the horses. In *Re Dean, Cooper-Dean v Stevens*, a trust annuity for the maintenance of certain horses and dogs was held valid. A proper way of providing for specified animals has been said to be by giving an annuity to a custodian payable so long as any of them are living: *Re Howard, Oakley v Aldridge*. See also *Re Endacott, Corpe v Endacott* [1960] Ch 232, [1959] 3 All ER 562, CA.
- 26 *Re Spensley's Will Trusts, Barclays Bank Ltd v Staughton* [1954] Ch 233, [1954] 1 All ER 178, CA. But see *Re Courtauld-Thomson Trusts* (1954) Times, 18 December, where a gift to apply income, and, if necessary, capital, in defraying the expenses of residence of a minister of the Crown in certain property, the subject matter of another disposition, was held to be a valid charitable trust.
- 27 *A-G v Whorwood* (1750) 1 Ves Sen 534.
- 28 *Wernher's Charitable Trust v IRC* [1937] 2 All ER 488.
- 29 *Re Corelli, Watt v Bridges* [1943] Ch 332, [1943] 2 All ER 519.
- 30 *Trades House of Glasgow v IRC* 1970 SLT 294, Ct of Sess.

61. Monuments and tombs.

Gifts for building, maintaining or repairing a monument or tomb which does not form part of the fabric or ornament of a church¹, whether as a memorial or burying place of the donor alone² or of himself and his family³, cannot be supported as charities, though they may be valid as private trusts if they do not offend the law against perpetuities⁴. However, these cases are anomalous and should not be followed except where the one is exactly like another⁵.

Gifts for monuments and tombs may not be construed as charitable even when expressed through a charitable gift to be applied preferably in a particular way 'and a small provision for keeping in repair the graves of my wife's parents'⁶. So, too, a bequest to an infirmary for the purpose of maintaining the testator's grave and headstone is void; and a further bequest of personalty for the general purposes of the infirmary subject to its accepting the prior bequest takes effect free from the condition⁷. However, a bequest for maintaining a burial ground, and in particular the grave of the testator's wife, is good⁸, and the direction with regard to the particular grave is merely a special obligation ancillary to the repair of the burial ground and not a separate trust⁹.

Where a fund is bequeathed to trustees upon trust out of the income to keep a tomb not forming part of a church¹⁰ in repair, and as to the residue¹¹, surplus¹², balance¹³ or remainder¹⁴, upon trust for charitable objects, the gift is construed as a bequest of the whole fund charged with a gift that fails, and not as a gift of the residue after a void gift¹⁵, and accordingly the whole fund, including the amount necessary to satisfy the invalid object, is applicable to the valid charitable object¹⁶.

As in the case of gifts for the repair of tombs, a condition attaching to a gift, that a tomb which is not part of the fabric of a church be kept in repair, is not charitable but is not of itself illegal. If such a condition is limited within the perpetuity period, so that no remote interest will arise on its determination, it may be a valid condition¹⁷; and a perpetual condition of this sort attaching to a valid charitable gift, with a gift over on breach of the condition to another charity, has been held valid¹⁸. However, where the gift over is not to a charity, the condition is void and the original bequest takes effect free from the condition¹⁹, and if the condition attaches to a non-charitable gift, that gift fails and with it the gift over²⁰.

By contrast, a bequest to trustees of a sum of money upon trust to invest it and pay the income to a cemetery company during such period as the company should keep specified graves in order, and if the graves should not be kept in order to pay the income to charitable organisations entitled to the balance of the testator's residuary income not required for another charitable purpose, has been held not to infringe the rule against perpetuities or the rule against inalienability and to be a valid gift²¹.

Local authorities and burial authorities have power to agree with any person to maintain private monuments and memorials in certain circumstances in consideration of the payment of a sum by him, provided that no such agreement imposes on the authority an obligation of maintenance with respect to a period exceeding 99 years from the date of the agreement²². A burial authority also has power to agree with any person, on such terms and conditions as it thinks proper, to maintain any grave, vault, tombstone or other memorial in a cemetery for a period not exceeding 100 years from the date of the agreement²³.

1 *Trimmer v Danby* (1856) 25 LJCh 424; *Hoare v Osborne* (1866) LR 1 Eq 585; *Re Rigley's Trusts* (1866) 36 LJCh 147; *Re Barker, Sherrington v Dean and Chapter of St Paul's Cathedral* (1909) 25 TLR 753.

2 *Mellick v Asylum President and Guardians* (1821) Jac 180; *Adnam v Cole* (1843) 6 Beav 353; *Lloyd v Lloyd* (1852) 2 Sim NS 255; *Willis v Brown* (1838) 2 Jur 987.

3 *Gravenor v Hallum* (1767) Amb 643; *Durour v Motteux* (1749) 1 Ves Sen 320; *Doe d Thompson v Pitcher* (1815) 3 M & S 407; *Re Rickard, Rickard v Robson* (1862) 31 Beav 244; *Fowler v Fowler* (1864) 33 Beav 616;

Hoare v Osborne (1866) LR 1 Eq 585; *Re Rigley's Trusts* (1866) 36 LJCh 147; *Fisk v A-G* (1867) LR 4 Eq 521; *Hunter v Bullock* (1872) LR 14 Eq 45; *Dawson v Small* (1874) LR 18 Eq 114; *Re Williams* (1877) 5 ChD 735; *Re Birkett* (1878) 9 ChD 576; *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381; *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187; *Re Rogerson, Bird v Lee* [1901] 1 Ch 715; *Toole v Hamilton* [1901] 1 IR 383. As to the maintenance of graveyards see PARA 34.

4 *Mellick v Asylum President and Guardians* (1821) Jac 180; *Trimmer v Danby* (1856) 25 LJCh 424; *Roche v M'Dermott* [1901] 1 IR 394 at 399. A trust in a will to keep up a tomb for as long as the law for the time being permits is valid for 21 years from the time of the testator's death: *Pirbright v Salwey* [1896] WN 86, followed in *Re Hooper, Parker v Ward* [1932] 1 Ch 38. Cf *Re Moore, Prior v Moore* [1901] 1 Ch 936, where the addition of words 'that is to say until the period of twenty-one years from the death of the last survivor of all persons who shall be living at my death' rendered the trust void for uncertainty. But see now the Perpetuities and Accumulations Act 1964, the Perpetuities and Accumulations Act 2009 (not yet in force); and **PERPETUITIES AND ACCUMULATIONS**.

5 *Re Endacott, Corpe v Endacott* [1960] Ch 232 at 251, [1959] 3 All ER 562 at 571, CA, per Harman LJ, and at 246 and 568 per Lord Evershed MR.

6 *Re Norton's Will Trusts, Lightfoot v Goldson* [1948] 2 All ER 842.

7 *Re Elliott, Lloyds Bank Ltd v Burton-on-Trent Hospital Management Committee* [1952] Ch 217, [1952] 1 All ER 145, where the prior bequest was admitted to be void as creating a perpetuity and, the condition precedent being therefore illegal, its effect on the further bequest as *malum prohibitum* was decided by reference to the civil law. See also **WILLS** vol 50 (2005 Reissue) PARA 421.

8 See *Re Hooper, Parker v Ward* [1932] 1 Ch 38.

9 *Re Manser, A-G v Lucas* [1905] 1 Ch 68.

10 The repair of a tomb forming part of a church is charitable: see PARA 34.

11 *Fisk v A-G* (1867) LR 4 Eq 521; *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187.

12 *Hoare v Osborne* (1866) LR 1 Eq 585; *Dawson v Small* (1874) LR 18 Eq 114; *Re Williams* (1877) 5 ChD 735.

13 *Hunter v Bullock* (1872) LR 14 Eq 45; and cf *Re Taylor, Martin v Freeman* (1888) 58 LT 538, where in a special case a bequest of 'the balance' was not construed as residuary. As to what constitutes a residuary gift to charity see generally *Paice v Archbishop of Canterbury* (1807) 14 Ves 364; *A-G v Goulding* (1788) 2 Bro CC 428; *Harbin v Masterman* (1871) LR 12 Eq 559; *Harbin v Masterman* [1894] 2 Ch 184, CA (affd sub nom *Wharton v Masterman* [1895] AC 186, HL).

14 *Re Birkett* (1878) 9 ChD 576.

15 The principle on which this class of cases is to be distinguished from the class (of which *Mitford v Reynolds* (1842) 1 Ph 185, forms one: see PARA 86), in which the charity took only the surplus after the amount necessary for the invalid object had been ascertained, and not the entire fund, is that the direction for the upkeep of the tomb created only a moral obligation: *Re Rogerson, Bird v Lee* [1901] 1 Ch 715 at 719 per Joyce J; *Re Dalziel, Midland Bank Executor and Trustee Co Ltd v St Bartholomew's Hospital* [1943] Ch 277, [1943] 2 All ER 656, where a gift over showed that no mere moral obligation was intended.

16 *Re Rogerson, Bird v Lee* [1901] 1 Ch 715; and see the cases cited in notes 11-14. Cf *Fowler v Fowler* (1864) 33 Beav 616 (where the gift of the surplus, after a trust to repair a tomb, was held void for uncertainty on the ground that the amount required for repairing a tomb could not be ascertained); *Re Rigley's Trusts* (1866) 36 LJCh 147 (where the court directed an inquiry to ascertain in what proportions a gift valid as to part and invalid as to the other part, namely the repair of a private tomb, should be divided). An affidavit of a competent person as to the cost of such repairs has been accepted: *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187; *Re Birkett* (1878) 9 ChD 576 at 579 per Jessel MR. The principle of these 'tomb cases' has been held inapplicable to a somewhat analogous gift for maintaining a memorial masonic temple: *Re Porter, Porter v Porter* [1925] Ch 746.

17 *Lloyd v Lloyd* (1852) 2 Sim NS 255 at 264 per Lord Cranworth V-C; *Re Dean, Cooper-Dean v Stevens* (1889) 41 ChD 552 at 557 per North J; *Pirbright v Salwey* [1896] WN 86. The ratio decidendi of the two last cited cases is 'anomalous and not easy to explain' (Jarman on Wills (8th Edn, 1951) p 286 note (s)); but *Pirbright v Salwey* was followed in *Re Hooper, Parker v Ward* [1932] 1 Ch 38 (Maugham J). In *Lloyd v Lloyd* there were two trusts for the repair of tombs: one of the inheritance on a trust to repair a tomb, which the court held void as a perpetuity (*Lloyd v Lloyd* at 266 per Lord Cranworth V-C); the other a condition that two annuitants should out of their life estates keep a tomb in repair, which was held binding on the annuitants. In that case, at 264,

Kindersley V-C said that he was satisfied that a condition simply for keeping a tomb in repair was not a charitable one, and was not of itself illegal; it might be illegal to vest property in trustees in perpetuity for such a purpose; but the direction that the annuitants should out of their life interests keep the tomb in repair was quite lawful and they were obliged, out of their annuities, to do so according to the direction of the will.

18 *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA. The principle of the decision was that the rule against perpetuities does not apply to a transfer, in certain events, of property from one charity to another. As to the validity of gifts over see PARA 142.

19 *Re Davies, Lloyd v Cardigan County Council* [1915] 1 Ch 543.

20 *Re Dalziel, Midland Bank Executor and Trustee Co Ltd v St Bartholomew's Hospital* [1943] Ch 277, [1943] 2 All ER 656.

21 *Re Chardon, Johnston v Davies* [1928] Ch 464; *Re Chambers' Will Trusts, Official Trustees of Charitable Funds v British Union for Abolition of Vivisection* [1950] Ch 267. Tudor on Charities (5th Edn, 1929) p 701 sets out clauses of the will and the court order omitted from the report of *Re Chardon, Johnston v Davies*, and notes that the decision in that case was not affected by the presence of charitable interests. See also the article 'The Upkeep of a Tomb' (1950) 100 L Jo 524, explaining the decision on the basis that the legatees were free to dispose of the income as they pleased so long as the graves were kept in repair. Such a gift would now be affected by the Perpetuities and Accumulations Act 1964 s 12: see PARA 143; and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1040. See also the Perpetuities and Accumulations Act 2009 (not yet in force).

On the other hand, a gift of income for an indefinite period to a society for the furtherance of non-charitable purposes is void: *Re Wightwick's Will Trusts, Official Trustees of Charitable Funds v Fielding-Ould* [1950] Ch 260, [1950] 1 All ER 689, citing *Re Dutton, ex p Peake* (1878) 4 ExD 54; *Re Clark's Trust* (1875) 1 ChD 497; *Re Swain, Phillips v Poole* (1908) 99 LT 604; *Cocks v Manners* (1871) LR 12 Eq 574 at 586 per Wickens V-C; *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110; *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90. See also *Re Elliott, Lloyds Bank Ltd v Burton-on-Trent Hospital Management Committee* [1952] Ch 217, [1952] 1 All ER 145 (see the text and note 7); *Re Conner, Provincial Bank of Ireland Ltd v General Cemetery Co of Dublin and Lucas* [1960] IR 67.

22 See the Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970 s 1(1); and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1048. As to burial authorities see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 915.

23 See the Local Authorities' Cemeteries Order 1977, SI 1977/204, art 10(7); and see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1048.

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62. Gifts for associations and perpetual institutions.

An association or institution may benefit its members in the course of carrying out its main charitable purpose, and this alone will not prevent its being a charity¹. It is a question of fact whether there is so much personal benefit, intellectual or professional, to the members of a society or body as to be incapable of being disregarded².

Gifts for associations or institutions whose objects are solely or substantially for the private advantage of their members are not charitable³, as, for example, gifts to societies for promoting the interests of the members of a profession⁴, and gifts for friendly and other mutual benefit societies⁵ not requiring poverty as an essential element to entitle a member to the benefits of the society⁶, the Corps of Commissionaires⁷, a trade union or its benevolent fund⁸, a sacred harmonic society⁹, a mechanics' institute¹⁰, a library¹¹, chess club¹², or museum¹³, established for subscribers only. However, this principle does not apply with full force to associations established for religious purposes, although it would if they were wholly secluded and contemplative¹⁴.

On the winding up of associations of this kind the funds may be divisible among the members for the time being¹⁵, but, where there is no resulting trust for subscribers and the members are only entitled by their contract of membership to a limited interest in the funds of the association, any surplus after satisfying the contractual rights of members passes to the Crown as bona vacantia¹⁶.

A gift to a perpetual unincorporated non-charitable institution may be construed as a gift to the individual members of the institution for the time being; and may be valid, if it is not, and when paid will not become, subject to any trust which prevents the existing members from spending the money as they please¹⁷. If, however, the gift is one which, by reason of its own terms or of the constitution of the institution in whose favour it is made, tends to a perpetuity, it is bad¹⁸, except in the case of a gift authorised by the Literary and Scientific Institutions Act 1854¹⁹, notwithstanding that such an institution is perpetual and non-charitable and that the members pay subscriptions²⁰.

1 See *IRC v Yorkshire Agricultural Society* [1928] 1 KB 611 at 630, CA, per Atkin LJ; and PARA 26 note 12.

2 *Midland Counties Institution of Engineers v IRC* (1928) 14 TC 285 at 293, CA, per Rowlatt J; *London Hospital Medical College v IRC* [1976] 2 All ER 113 at 122, [1976] 1 WLR 613 at 623 per Brightman J ('a matter of degree').

3 A society engaged in joint operation for the sake of gain may be a partnership, but a society for charitable purposes is not: see **PARTNERSHIP** vol 79 (2008) PARA 6.

4 *R v Income Tax Special Comrs, ex p Headmasters' Conference, R v Income Tax Special Comrs, ex p Incorporated Association of Preparatory Schools* (1925) 41 TLR 651; *Geologists' Association v IRC* (1928) 14 TC 271, CA (combination of members for scientific purposes and mutual improvement, all the benefits being enjoyed primarily by the members; followed in *Midland Counties Institution of Engineers v IRC* (1928) 14 TC 285, CA (association of persons for mutual improvement in technical and professional knowledge); *Honourable Co of Master Mariners v IRC* (1932) 17 TC 298 (association to foster professional interests); *Chartered Insurance Institute v London Corp'n* [1957] 2 All ER 638, [1957] 1 WLR 867, DC. So, too, a body formed to register and regulate the members of a profession is not charitable: *General Medical Council v IRC* (1928) 97 LKB 578, CA; *General Nursing Council for Scotland v IRC* 1929 SC 664, Ct of Sess (council not a body established for charitable purposes only; funds partly benefited professional interest); *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540, [1959] 1 All ER 325, HL; unless its purpose is primarily for the benefit of the public and not for the benefit of the profession: see *Application for Registration as a Charity by the General Medical Council*, Decision of the Charity Commissioners, 2 April 2001, at para 10.3, where on the facts before it (cf *General Medical Council v IRC*) the Charity Commission found the General Medical Council to be charitable. As to decisions of the Charities Commission see PARA 542.

5 *Re Clark's Trust* (1875) 1 ChD 497; *Cunnack v Edwards* [1896] 2 Ch 679, CA; *Re Topham, Public Trustee v Topham* [1938] 1 All ER 181 (club having for object the religious, intellectual, physical and social improvement of its members and associated with a church); *Lord Nuffield v IRC* (1946) 175 LT 465 (trust to organise mutual insurance associations to meet expenditure necessitated by illness, not charitable); and see the cases cited in note 15. The receipt of donations and subscriptions is not sufficient to make a friendly society charitable: *Re Clark's Trust* at 500 per Hall V-C; *Re Buck, Bruty v Mackey* [1896] 2 Ch 727 at 733 per Kekewich J; *Braithwaite v A-G* [1909] 1 Ch 510. See, however, *Re Forster, Gellatly v Palmer* [1939] Ch 22, [1938] 3 All ER 767.

6 See the cases cited in PARA 20 notes 6-7.

7 *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110.

8 *Re Amos, Carrier v Price* [1891] 3 Ch 159. See also *Re Estlin, Prichard v Thomas* (1903) 72 LJCh 687.

9 *Re Allsop, Gell v Carver* (1884) 1 TLR 4; but see *Royal Choral Society v IRC* [1943] 2 All ER 101, CA.

10 *Re Dutton, ex p Peake* (1878) 4 ExD 54; *Re Sheraton's Trusts* [1884] WN 174.

11 *Carne v Long* (1860) 2 De GF & J 75; *Re Swain, Phillips v Poole* (1908) 99 LT 604; *Re Prevost, Lloyds Bank Ltd v Barclays Bank Ltd* [1930] 2 Ch 383.

12 *Re Swain, Phillips v Poole* (1908) 99 LT 604.

13 *Thomson v Shakespear* (1860) 1 De GF & J 399; *Laverty v Laverty* [1907] 1 IR 9; *Re Joy, Purday v Johnson* (1888) 60 LT 175.

14 *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; and see PARA 29.

15 *Brown v Dale* (1878) 9 ChD 78; *Re Russell Institution, Figgins v Baghino* [1898] 2 Ch 72; *Re Jones, Clegg v Ellison* [1898] 2 Ch 83; *Re Printers and Transferrers Amalgamated Trades Protection Society* [1899] 2 Ch 184; *Re Lead Co's Workmen's Fund Society, Lowes v Governor and Co for Smelting Down Lead with Pit and Sea Coal* [1904] 2 Ch 196; *Re Customs and Excise Officers' Mutual Guarantee Fund, Robson v A-G* [1917] 2 Ch 18; *Re St Andrew's Allotment Association's Trusts, Sargeant v Probert* [1969] 1 All ER 147, [1969] 1 WLR 229; *Re Sick and Funeral Society of St John's Sunday School, Golcar* [1973] Ch 51, [1972] 2 All ER 439; *Re GKN Bolts and Nuts Ltd Sports and Social Club, Leek v Donkersley* [1982] 2 All ER 855, [1982] 1 WLR 774. Contra, *Re West Sussex Constabulary's Widows, Children and Benevolent (1930) Fund Trusts, Barnett v Ketteringham* [1971] Ch 1, [1970] 1 All ER 544. See also *Re Grant's Will Trusts, Harris v Anderson* [1979] 3 All ER 359, [1980] 1 WLR 360; *Conservative and Unionist Central Office v Burrell (Inspector of Taxes)* [1980] 3 All ER 42 (affd without discussion of this point [1982] 2 All ER 1, [1982] 1 WLR 522, CA).

16 *Cunnack v Edwards* [1896] 2 Ch 679, CA. As to the court's jurisdiction to dissolve such societies on sufficient cause being shown see *Blake v Smither* (1906) 22 TLR 698; and on the question of dissolution generally see *Re William Denby & Son Ltd Sick and Benevolent Fund, Rowling v Wilks* [1971] 2 All ER 1196, [1971] 1 WLR 973. As to bona vacantia see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 231 et seq.

17 *Cocks v Manners* (1871) LR 12 Eq 574; *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110 at 114 per Byrne J; *Re Smith, Johnson v Bright-Smith* [1914] 1 Ch 937; *Re Drummond, Ashworth v Drummond* [1914] 2 Ch 90 at 97 per Eve J; *Bourne v Keane* [1919] AC 815 at 874, HL, per Lord Buckmaster, and at 916, per Lord Parmoor; *Re Delany, Conoley v Quick* [1902] 2 Ch 642; *Re Turkington, Owen v Benson* [1937] 4 All ER 501 (gift to local masonic lodge as a fund to build local temple: held that members could not be trustees for themselves); *Re Taylor, Midland Bank Executor and Trustee Co Ltd v Smith* [1940] Ch 481, [1940] 2 All ER 637 (on appeal [1940] Ch 834, CA) (gift for bank staff association fund, formed for purposes only partly charitable, to be administered according to rules of fund under which committee could deal with it as it pleased; on appeal, parties agreed); *Re Price, Midland Bank Executor and Trustee Co Ltd v Harwood* [1943] Ch 422, [1943] 2 All ER 505 (gift to Anthroposophical Society to be used at the discretion of the chairman and executive council for carrying on the teachings of the founder: capital and income being held to be available); *Re Lipinski's Will Trusts, Gosschalk v Levy* [1976] Ch 235, [1977] 1 All ER 33 (a non-charitable purpose trust which is directly or indirectly for the benefit of ascertained individuals is valid). Contrast *Re Grant's Will Trusts, Harris v Anderson* [1979] 3 All ER 359, [1980] 1 WLR 360. See also generally *Leahy v A-G for New South Wales* [1959] AC 457, [1959] 2 All ER 300, PC; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; *Re Recher's Will Trusts, National Westminster Bank Ltd v National Anti-Vivisection Society* [1972] Ch 526, [1971] 3 All ER 401.

18 *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110 at 114 per Byrne J; *Thomson v Shakespear* (1860) 1 De GF & J 399; *Carne v Long* (1860) 2 De GF & J 75; *Re Dutton, ex p Peake* (1878) 4 ExD 54; *Re Amos, Carrier v Price* [1891] 3 Ch 159; *Re Swain, Phillips v Poole* (1908) 99 LT 604; *Re Clifford, Mallam v McFie* [1912] 1 Ch 29, 81 LJCh 220; *Re Macaulay's Estate, Macaulay v O'Donnell* [1943] Ch 435n, HL (gift to local lodge of Theosophical Society for the maintenance and improvement of the local Theosophical Lodge denotes permanency and endowment). The invalidity of such gifts is not saved by the Perpetuities and Accumulations Act 1964: see s 15(4); and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1005.

19 See **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 945.

20 See the Literary and Scientific Institutions Act 1854 s 30; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 959. See also *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568 at 573 per Buckley J.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(3) NON-CHARITABLE PURPOSES/(ii) Superstitious Uses/63. Superstitious uses.

(ii) Superstitious Uses

63. Superstitious uses.

Certain kinds of gift have in the past been held void as being for superstitious uses, whether or not their validity would otherwise depend on whether they were valid charitable gifts. A

superstitious use may be defined as one which has for its object the propagation or the rites of a religion not tolerated by the law¹.

The Act of Uniformity 1558 made all forms of religion other than that of the Church of England illegal, and consequently gifts for the clergy or the buildings of Roman Catholics or Protestant dissenters, or for the propagation of the doctrines and principles of Roman Catholicism or the Jewish religion², were held void for superstition upon the common law principle that no disposition of property for purposes which are illegal can effect the intended purposes³.

The effect of the Act of Uniformity 1558 was, however, alleviated by a succession of relieving Acts⁴, and the Act of Uniformity itself has now been almost wholly repealed. The result is that there are now no religions proscribed by law⁵. It has been said that dispositions connected with relics, the veneration of saints or the sustenance of miracle producers might be held invalid despite the relieving Acts⁶, but even if these practices were regarded as superstitious, such dispositions would not in themselves fall within the definition of superstitious uses⁷. If they were to be held invalid it might be on the ground that they were not charitable, there being no evidence of public benefit of which the court could take cognisance⁸.

1 This is not exhaustive but will serve as a working definition: *Bourne v Keane* [1919] AC 815 at 845, 874, 916, HL, per Lord Birkenhead LC. See also *R v Lady Portington* (1692) 1 Salk 162.

2 See eg *Jones' Case* (1690) [1893] 2 Ch 49n, HL; *A-G v Todd* (1837) 1 Keen 803; *Smart v Prujean* (1801) 6 Ves 560; *De Garcin v Lawson* (1798) 4 Ves 433n; *Doe d Wellard v Hawthorn* (1818) 2 B & Ald 96; *Cary v Abbot* (1802) 7 Ves 490; *A-G v Power* (1809) 1 Ball & B 145; *De Themmines v De Bonneval* (1828) 5 Russ 288; *De Costa v De Paz* (1754) 2 Swan 487n.

3 *Bourne v Keane* [1919] AC 815 at 847, HL, per Lord Birkenhead LC.

4 See the Toleration Act 1688 (repealed); the Nonconformist Relief Act 1779 (repealed); the Places of Religious Worship Act 1812 (repealed); the Roman Catholic Relief Act 1829 (see **ECCLESIASTICAL LAW** vol 14 PARA 1389 et seq); the Roman Catholic Charities Act 1832 (repealed); the Liberty of Religious Worship Act 1855 (repealed); the Roman Catholic Relief Act 1926 (repealed); the Religious Disabilities Act 1846 (repealed) (Jews). As to the effect of the Toleration Act 1688 see *Evans' Case* (1767) cited in 3 Mer 375n.

5 Cf *Thornton v Howe* (1862) 31 Beav 14; and see PARA 30.

6 *Bourne v Keane* [1919] AC 815 at 855, HL, per Lord Birkenhead LC.

7 See the text to note 1.

8 Cf *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(3) NON-CHARITABLE PURPOSES/(ii) Superstitious Uses/64. Gifts for masses for the dead.

64. Gifts for masses for the dead.

Gifts for masses were among the gifts void as being for superstitious uses; even after the relieving Acts¹ it was believed that gifts for masses for the dead were void for superstition², but this was based on a misunderstanding³. It seems that no gifts can now be rendered void on this ground⁴. Such a gift may well be charitable, for it is clearly for the advancement of religion, and the element of public benefit required is satisfied at least where the masses are to be celebrated in public⁵.

1 As to the relieving Acts see PARA 63 text and note 4.

2 See *West v Shuttleworth* (1835) 2 My & K 684.

3 See *Bourne v Keane* [1919] AC 815, HL, overruling *West v Shuttleworth* (1835) 2 My & K 684 and the cases following it.

4 The Roman Catholic Charities Act 1860 (repealed) seems to have assumed that there could still be trusts void for superstition, but it was a remedial Act and, if there could be no such trusts, the remedy is merely superfluous: see *Bourne v Keane* [1919] AC 815 at 856, HL, per Lord Birkenhead LC, and at 896, per Lord Atkinson. Lord Birkenhead LC said in that case, at 860, that the decision did not mean that there are now no superstitious uses, but he did not suggest any, nor have any come to light since 1919.

5 *Re Hetherington* [1990] Ch 1, sub nom *Re Hetherington, Gibbs v McDonnell* [1989] 2 All ER 129, following *Re Caus, Lindeboom v Camille* [1934] Ch 162, notwithstanding doubts expressed in *Gilmour v Coats* [1949] AC 426, [1949] 1 All ER 848, HL. As to the requirement for public benefit see PARA 6 et seq. As to religious purposes see PARA 29.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(3) NON-CHARITABLE PURPOSES/(iii) Non-Charitable Public Purposes/65. Non-charitable public objects.

(iii) Non-Charitable Public Purposes

65. Non-charitable public objects.

Although purposes beneficial to the public or of public utility are prima facie charitable¹, certain public purposes have been held not to be charitable because they do not fall within the spirit and intendment of the preamble to the Charitable Uses Act 1601². Such a purpose may possibly in the future be upheld as charitable³ under the Charities Act 2006 as reasonably being either regarded as (1) analogous to, or within the spirit of, any purposes falling within the Act or the existing law⁴; or (2) analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within (1)⁵. However, until such time the following have been held not to be charitable: bequests for purposes of benevolence⁶ or benevolence and liberality⁷, for patriotic⁸, civil or religious⁹, philanthropic¹⁰, parochial¹¹, missionary¹², pious¹³, or Roman Catholic¹⁴ purposes, or worthy causes¹⁵, or for parish work¹⁶, or for social or recreational purposes in connection with certain churches¹⁷, or for purposes most conducive to the good of religion in a diocese¹⁸, or for purposes conducive to the attainment of the objects of an association not limited to the advancement of religion¹⁹, or for helping to carry on the work of the Church in Wales²⁰, or for executing the Papal office²¹, or for purposes of hospitality²² or general utility²³ or for emigration uses²⁴, or for simplifying spelling²⁵, or for increasing the sum of available knowledge²⁶, or for the storage of books²⁷. Although the provision of the means of public recreation may be charitable²⁸, trusts for the promotion of religious, social and physical well-being²⁹, and for religious, moral, social and recreative purposes³⁰ and for giving aid and advice to the community generally³¹ have been held not to be charitable. A gift to provide 'some useful memorial to myself' is not charitable³²; nor is a gift for the general benefit and welfare of children for the time being in a local authority home³³. The protection of the interests of holders in the United Kingdom of foreign bonds³⁴ is not charitable; nor is a pig marketing board³⁵ or a statutory body set up to administer a harbour³⁶, and a body established to help the government resist strikes threatening essential public services is also not charitable³⁷.

1 *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA; and see PARA 46.

2 *le 43 Eliz 1 c 4* (1601) (now wholly repealed: see PARA 2 note 25; and PARA 46). A trust to distribute income among organisation or institution operating for the public good was held not exclusively charitable: see *A-G of the Cayman Islands v Wahr Hansen* [2001] 1 AC 75, [2000] 3 All ER 642, PC.

- 3 Although note that the question of what falls within the spirit and intendment of the Charitable Uses Act 1601 tended not to be answered restrictively: *Vancouver Regional FreeNet Association v Minister of National Revenue* (1996) 137 DLR (4th) 206, Can CA (provision of public internet access within the spirit and intendment of the repair of bridges, ports, causeways and highways).
- 4 See the Charities Act 2006 s 2(2)(m), (4)(b); and PARA 2.
- 5 See the Charities Act 2006 s 2(2)(m), (4)(c); and PARA 2.
- 6 *James v Allen* (1817) 3 Mer 17; *Re Jarman's Estate, Leavers v Clayton* (1878) 8 ChD 584; *A-G for New Zealand v Brown* [1917] AC 393, PC; *A-G for New Zealand v New Zealand Insurance Co Ltd* [1936] 3 All ER 888, PC.
- 7 *Morice v Bishop of Durham* (1805) 10 Ves 522. This is not so in Scotland: *Miller v Rowan* (1837) 5 Cl & Fin 99, HL.
- 8 *A-G v National Provincial and Union Bank of England* [1924] AC 262, HL.
- 9 *Re Friends' Free School, Clibborn v O'Brien* [1909] 2 Ch 675.
- 10 *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451, CA.
- 11 *Re Stratton, Knapman v A-G* [1931] 1 Ch 197, CA; *Cookstown Roman Catholic Church Trustees v IRC* (1953) 34 TC 350 (parochial requirements).
- 12 As to missionary purposes see PARA 31.
- 13 *Heath v Chapman* (1854) 2 Drew 417 at 425-426 per Page Wood V-C.
- 14 *MacLaughlin v Campbell* [1906] 1 IR 588; and see *Re Davidson, Minty v Bourne* [1909] 1 Ch 567, CA. Cf *Re Schoales, Schoales v Schoales* [1930] 2 Ch 75 (gift to the Roman Catholic Church for its use: charitable).
- 15 *Re Gillingham Bus Disaster Fund, Bowman v Official Solicitor* [1958] Ch 300 at 305, [1958] 1 All ER 37 at 39 per Harman J; affd [1959] Ch 62, [1958] 2 All ER 749, CA, where there are dicta arguably supporting the opposite proposition. See *Re Atkinson's Will Trusts, Atkinson v Hall* [1978] 1 All ER 1275, [1978] 1 WLR 586 where the inclusion of 'worthy causes' in the list in the text was approved.
- 16 *Farley v Westminster Bank Ltd* [1939] AC 430, [1939] 3 All ER 491, HL.
- 17 *Londonderry Presbyterian Church House Trustees v IRC* [1946] NI 178, CA.
- 18 *Dunne v Byrne* [1912] AC 407, PC.
- 19 *Oxford Group v IRC* [1949] 2 All ER 537, CA; followed in *Associated Artists Ltd v IRC* [1956] 2 All ER 583, [1956] 1 WLR 752. See also PARA 29 note 5.
- 20 *Re Jackson, Midland Bank Executor and Trustee Co Ltd v Archbishop of Wales* [1930] 2 Ch 389.
- 21 *Re Moore, Moore v Pope Benedict XV* [1919] 1 IR 316.
- 22 *Re Hewitt's Estate, Gateshead Corp'n v Hudspeth* (1883) 53 LJCh 132; and see *A-G v Whorwood* (1750) 1 Ves Sen 534; and *Re Corelli, Watt v Bridges* [1943] Ch 332, [1943] 2 All ER 519 (hostel for distinguished visitors from far countries).
- 23 *Kendall v Granger* (1842) 5 Beav 300; *Re Woodgate* (1886) 2 TLR 674.
- 24 *Re Sidney, Hingeston v Sidney* [1908] 1 Ch 488, CA; *Keren Kayemeth Le Jisroel Ltd v IRC* [1932] AC 650, HL (trust for settlement of Jews in Palestine and elsewhere); but cf *Verge v Somerville* [1924] AC 496, PC (cited in PARA 49 note 7) and *Re Tree, Idle v Tree* [1945] Ch 325, [1945] 2 All ER 65 (cited in PARA 20 note 8).
- 25 *Sir GB Hunter (1922) C Trust (Trustees) v IRC* (1929) 45 TLR 344; *Re Shaw, Public Trustee v Day* [1957] 1 All ER 745, [1957] 1 WLR 729.
- 26 *Whicker v Hume* (1858) 7 HL Cas 124 at 155 per Lord Chelmsford LC; *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 472-473, CA, per Rigby LJ; *Re Shaw, Public Trustee v Day* [1957] 1 All ER 745, [1957] 1 WLR 729.
- 27 *Re Hawkins, Walrond v Newton* (1906) 22 TLR 521.

- 28 See the Recreational Charities Act 1958; and PARAS 52-55.
- 29 *IRC v Baddeley* [1955] AC 572, [1955] 1 All ER 525, HL.
- 30 *Londonderry Presbyterian Church House Trustees v IRC* [1946] NI 178, CA.
- 31 *D'Aguiar v Guyana IRC* (1970) 49 ATC 33, PC.
- 32 *Re Endacott, Corpe v Endacott* [1960] Ch 232, [1959] 3 All ER 562, CA.
- 33 *Re Cole, Westminster Bank Ltd v Moore* [1958] Ch 877, [1958] 3 All ER 102, CA; but see *Re Sahal's Will Trusts, Alliance Assurance Co Ltd v A-G* [1958] 3 All ER 428, [1958] 1 WLR 1243.
- 34 *Foreign Bondholders Corp'n v IRC* [1944] 1 KB 403, [1944] 1 All ER 420, CA.
- 35 *Pig Marketing Board (Northern Ireland) Ltd v IRC* [1945] NI 155.
- 36 *Auckland Harbour Board v IRC* [1959] NZLR 204.
- 37 *Trustees for the Roll of Voluntary Workers v IRC* 1942 SC 47, Ct of Sess.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(3) NON-CHARITABLE PURPOSES/(iii) Non-Charitable Public Purposes/66. Purposes contrary to public policy.

66. Purposes contrary to public policy.

A gift for a purpose not permitted by the law is void and cannot be charitable¹. Similarly, if the gift is for a purpose contrary to public policy it is not a good charitable gift. Thus, gifts to pay the fines of imprisoned criminals², or which tend to promote revolution in a friendly foreign state³, or for propagating doctrines subversive of morality⁴ or disseminating pernicious knowledge⁵, may be held void. A gift for a purpose contrary to ecclesiastical law, but not otherwise illegal, is not invalid on that ground⁶, and the propagation of doctrines subversive of Christianity is not necessarily contrary to public policy⁷.

1 Cf the cases on superstitious uses: see PARA 63. As to gifts for illegal purposes see **GIFTS** vol 52 (2009) PARAS 261-262.

2 *Thrupp v Collett* (1858) 26 Beav 125. The reference in the preamble to the Charitable Uses Act 1601 (43 Eliz 1 c 4 (1601)) (now wholly repealed: see PARA 2 note 25; and PARA 46) to the relief and redemption of prisoners or captives may be taken to refer to prisoners of war or Christian captives in Barbary (cf *Ironmongers' Co v A-G* (1844) 10 Cl & Fin 908, HL), or debtors other than those in contempt of court (cf *Re Prison Charities* (1873) LR 16 Eq 129).

3 *Habershon v Vardon* (1851) 4 De G & Sm 467 (political restoration of the Jews to Jerusalem, then under Turkish sovereignty).

4 *Thornton v Howe* (1862) 31 Beav 14; *Thompson v Thompson* (1844) 1 Coll 381 at 397 per Shadwell V-C; and see *Russell v Jackson* (1852) 10 Hare 204 (socialism); *Pare v Clegg* (1861) 29 Beav 589.

5 *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 474, CA, per Rigby LJ.

6 *Re Bowman, Secular Society Ltd v Bowman* [1915] 2 Ch 447 at 470, CA, per Warrington LJ; on appeal sub nom *Bowman v Secular Society Ltd* [1917] AC 406, HL.

7 *Bowman v Secular Society Ltd* [1917] AC 406, HL, overruling *Briggs v Hartley* (1850) 19 LJCh 416, and *Cowan v Milbourn* (1867) LR 2 Exch 230. It seems that this authority extends to doctrines subversive of all religion (see *Bowman v Secular Society Ltd* at 420 per Lord Finlay LC), although the House of Lords only treated the society as anti-Christian. See also *Thompson v Thompson* (1844) 1 Coll 381.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/1. CHARITABLE PURPOSES/(3) NON-CHARITABLE PURPOSES/(iii) Non-Charitable Public Purposes/67. Political purposes.

67. Political purposes.

A trust for the attainment of political objects is not charitable, not because it is illegal (for everyone is at liberty to advocate or promote by any lawful means a change in the law), but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift¹. Political purposes include²: (1) furthering the interests of a political party; (2) procuring, or opposing³, changes in the law of this, or a foreign, country; (3) procuring a reversal of government policy or a particular decision of government authority in this, or a foreign, country; (4) attempting to sway public opinion on controversial social issues⁴. Any purpose with the object of influencing the legislature is a political purpose⁵, even where this is consistent with the way the law is heading⁶; and a trust for furthering the views of a particular political party, whether under the guise of an educational centre⁷ or a fund for adult education on party lines⁸, is not charitable; but a trust for a purpose which is charitable is not rendered non-charitable even if the trust instrument envisages the use of political means to achieve the charitable object⁹.

Although charities may not have political objects, political activity may be carried out by charities, but only as a means of supporting their charitable purposes¹⁰. Political activity cannot be the continuing and sole activity of a charity¹¹.

1 *Bowman v Secular Society Ltd* [1917] AC 406 at 442, HL, per Lord Parker, dealing with a society advocating the disestablishment of the Church; *National Anti-Vivisection Society v IRC* [1948] AC 31, [1947] 2 All ER 217, HL (society having as its main purpose the compulsory abolition of vivisection by Act of Parliament: not charitable); *Re Jones, Public Trustee v Earl of Clarendon* (1929) 45 TLR 259 (Primrose League: not a charity); *English-Speaking Union v Westminster City Council* (1959) 4 RRC 97, DC; *Re Bushnell, Lloyds Bank Ltd v Murray* [1975] 1 All ER 721, [1975] 1 WLR 1596 (trust for propagation of doctrines of socialist medicine not charitable); *McGovern v A-G* [1982] Ch 321, [1981] 3 All ER 493. See also *IRC v Temperance Council of Christian Churches of England and Wales* (1926) 136 LT 27; *Re Hood, Public Trustee v Hood* [1931] 1 Ch 240 at 250, CA, per Lord Hanworth MR, and at 252 per Lawrence LJ (trust to promote temperance mainly by political means: not charitable, though the advancement of temperance otherwise is charitable).

2 *McGovern v A-G* [1982] Ch 321, [1981] 3 All ER 493. As to where other public purposes are charitable see PARA 49. As to non-charitable public objects see PARA 65.

3 *Re Koeppler Will Trusts, Barclays Bank Trust Co Ltd v Slack* [1984] Ch 243, [1984] 2 All ER 111; *revsd* [1986] Ch 423, [1985] 2 All ER 869, CA, without affecting relevant dictum.

4 See eg *Southwood v A-G* [2000] WTLR 1199, CA, where a trust to advance education of the public in militarism and disarmament, which defined policies of certain government and challenged them, was political, not charitable.

5 *IRC v Temperance Council of Christian Churches of England and Wales* (1926) 136 LT 27; cf *Re Shaw, Public Trustee v Day* [1957] 1 All ER 745, [1957] 1 WLR 729, where the achievement of the purpose (the promotion of a new alphabet) would have involved legislation (an appeal was dismissed by consent on terms [1958] 1 All ER 245n, CA). See also *Baldry v Feintuck* [1972] 2 All ER 81 at 85, [1972] 1 WLR 552 at 558 per Brightman J; *Webb v O'Doherty* (1991) 3 Admin LR 731, (1991) Times, 11 February (campaigning in the sense of seeking to influence public opinion on political matters not a charitable activity).

6 *Hanchett-Stamford v A-G* [2008] EWHC 330 (Ch), [2009] Ch 173, [2008] 4 All ER 323 at [22] per Lewison J (prevention of cruelty to performing animals necessitating a change in the law to ban such performances not charitable despite the passing of the Animal Welfare Act 2006, which creates offences of causing distress to animals but does not go so far as to prohibit performing animals). However, some persuasive support for the contrary view may be given by *Public Trustee v A-G for NSW* (1997) 42 NSWLR 600 at 607, per Santow J.

7 *Bonar Law Memorial Trust v IRC* (1933) 49 TLR 220; and see PARA 50 note 2.

8 *Re Hopkinson, Lloyds Bank Ltd v Baker* [1949] 1 All ER 346.

9 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 51, 61, 76, [1947] 2 All ER 217 at 225, HL, per Lord Wright, at 231 per Lord Simonds, and at 239 per Lord Normand; *Re Hood, Public Trustee v Hood* [1931] 1 Ch 240, CA.

10 See *CC9: Speaking Out: Guidance on Campaigning and Political Activity by Charities* (Charity Commission, March 2008) para D5.

11 See *CC9: Speaking Out: Guidance on Campaigning and Political Activity by Charities* (Charity Commission, March 2008) para D5.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(i) Creation by Assurance/68. Realty and personalty.

2. CREATION OF CHARITABLE TRUSTS

(1) FORMAL REQUIREMENTS AND RESTRICTIONS

(i) Creation by Assurance

68. Realty and personalty.

As a general rule, realty and personalty of all descriptions, including advowsons¹ and easements², may be given to a charity by deed or by will.

Since the repeal of the mortmain laws³, restrictions on the assurance of land in favour of charity exist only in the form of personal and corporate incapacity. Limited owners and persons under disability may make charitable gifts only in accordance with their particular powers or in the manner and form prescribed by enabling statutes. A corporation may only make charitable gifts within the framework of its constitution and for objects contemplated by it⁴, if it is created by statute⁵, or registered under the Companies Acts⁶, or the Charities Act 2006⁷ or is a municipal corporation⁸. A corporation created by royal charter, however, has *prima facie* the same power of disposition as a natural person⁹.

1 *A-G v Ward* (1829) 7 LJOS Ch 114; *A-G v Archbishop of York* (1853) 17 Beav 495; *A-G v St John's Hospital, Bedford* (1864) 10 Jur NS 897; *Re St Stephen, Coleman Street, Re St Mary the Virgin, Aldermanbury* (1888) 39 ChD 492; *Hunter v A-G* [1899] AC 309 at 322, HL, per Lord Davey; *Re Church Patronage Trust, Laurie v A-G* [1904] 2 Ch 643, CA. But see the Patronage (Benefices) Measure 1986 s 3, prohibiting the sale of advowsons; and **ECCLESIASTICAL LAW**.

2 The contrary was stated in *Duke on Charitable Uses*, ed Bridgman (1805) 137-138, but there seems to be no reason why such a grant should not be made, and in many cases charities must be entitled to easements (see **EASEMENTS AND PROFITS A PRENDRE**).

3 See PARAS 82-83.

4 It may not be *ultra vires* for a company to give away its property to charity, if it is done *bona fide* in the interests of the company: see *Hutton v West Cork Rly Co* (1883) 23 ChD 654 at 673, CA, per Bowen LJ; *Evans v Brunner, Mond & Co* [1921] 1 Ch 359; *Re Lee, Behrens & Co Ltd* [1932] 2 Ch 46; but see also *Parke v Daily News Ltd* [1962] Ch 927, [1962] 2 All ER 929. Parliament has recognised this by obliging companies to disclose, in directors' reports, charitable donations to a total of more than £2,000: see the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008, SI 2008/409, Sch 5 para 4; the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, SI 2008/410, Sch 7 para 5; and **COMPANIES** vol 15 (2009) PARAS 822, 829.

- 5 *Baroness Wenlock v River Dee Co* (1883) 36 ChD 675n, CA; on appeal (1885) 10 App Cas 354, HL.
- 6 As to the registration of companies see **COMPANIES** vol 14 (2009) PARA 111 et seq.
- 7 Ie as a charitable incorporated organisation: see PARA 243.
- 8 See **LOCAL GOVERNMENT** vol 69 (2009) PARA 3; **LONDON GOVERNMENT**. See generally **GIFTS**.
- 9 See *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch. As to the limitation of powers of chartered corporations see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1230; **GIFTS** vol 52 (2009) PARA 208.

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69. Facilities for giving land, etc to charity.

The Universities of Oxford, Cambridge and Durham and certain colleges¹, and the Crown Estates Commissioners with the consent of Her Majesty under the royal sign manual² may give limited areas of land for certain charitable purpose.

Particular classes of donor have also been given facilities for giving limited areas of land for special charitable purposes. These include any life tenant, a lord of a manor in respect of common land, a beneficiary under a trust, the guardian of a minor, and various corporate or public bodies and trustees holding land in a corporate, public or charitable capacity, who may grant land as a site for a school and certain allied purposes³, or for enlarging a churchyard or burial ground⁴. Similar provisions apply to assist gifts for the promotion of science, literature and the fine arts, including libraries and reading rooms⁵; or for a place of worship, a minister's residence or a burial place⁶.

Former powers for endowing or augmenting a minister's income or providing a church or chapel for a new parish⁷ and of corporations, trustees of charitable institutions and persons absolutely entitled for giving to the Church Commissioners⁸ land for providing a church, chapel, churchyard or parsonage⁹ have been replaced by more extensive powers conferred on any corporation, any trustees for charitable purposes, the Crown Estates Commissioners, the Chancellor of the Duchy of Lancaster, the Duke of Cornwall and government departments to give or convey land to the Church Commissioners for churches, churchyards or burial grounds, residences for incumbents or other ecclesiastical persons, or for providing access to or improving the amenities of any of the foregoing¹⁰.

In some cases the court has allowed subscriptions and donations in favour of charity to be made out of the estate of a person who lacks capacity¹¹, but it can only authorise a gift or settlement where this is in the best interests of the patient¹². A capital sum may in some circumstances be paid to charity under a power of advancement in discharge of the moral obligation of a wealthy beneficiary under a settlement¹³.

1 See the Universities and College Estates Act 1925 ss 15, 16; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379.

2 See the Crown Estate Act 1961 s 4; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 294. As to the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 280.

3 See the School Sites Act 1841 ss 2, 6, 10; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1354.

4 See the Consecration of Churchyards Act 1867 s 4, applying certain provisions of the School Sites Act 1841; and **CREMATION AND BURIAL; ECCLESIASTICAL LAW**.

5 See the Literary and Scientific Institutions Act 1854; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 939 et seq.

6 See the Places of Worship Sites Act 1873; the Places of Worship Sites Amendment Act 1882; and **ECCLESIASTICAL LAW** vol 14 PARA 1065. See also the Reverter of Sites Act 1987 ss 1, 6, 7; and PARAS 70-71.

7 New Parishes Act 1843 s 22 (repealed); New Parishes Act 1844 s 11 (repealed); New Parishes Act 1856 s 4 (repealed). See the New Parishes Measure 1943; and **ECCLESIASTICAL LAW**.

8 These Commissioners have replaced the Ecclesiastical Commissioners: see the Church Commissioners Measure 1947; and **ECCLESIASTICAL LAW** vol 14 PARA 362 et seq.

9 Church Building Act 1818 s 33 (repealed); Church Building Act 1819 (repealed); Church Building Act 1822 ss 2, 3 (both repealed); Church Building Act 1831 ss 2, 7 (both repealed); Church Building Act 1838 ss 6-9 (all repealed). See the New Parishes Measure 1943; and **ECCLESIASTICAL LAW**.

10 See the New Parishes Measure 1943 ss 13, 14 (note that the amendments made to s 14 by the Charities Act 1960 Sch 6 are not affected by the repeal of that Act by the Charities Act 2006: see Sch 10 para 23(d)); and **ECCLESIASTICAL LAW** vol 14 PARAS 1061-1062.

11 *Re Frost* (1870) 5 Ch App 699; *Re Strickland* (1871) 6 Ch App 226. As to mental capacity see the Mental Capacity Act 2005 ss 1(2), 2; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.

12 See the Mental Capacity Act 2005 ss 4, 16, 18(b), (h); and **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 642, 648, 759.

13 *Re Clore's Settlement Trusts, Sainer v Clore* [1966] 2 All ER 272, [1966] 1 WLR 955. See also *X v A* [2005] EWHC 2706 (Ch), [2006] 1 All ER 952, [2006] 1 WLR 741.

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70. Rights of reverter.

Land granted under the School Sites Act 1841 and the other similar nineteenth century enactments for the establishment of schools and churches and other charitable purposes may now be put to alternative use if, the land being no longer used for the purpose of the grant¹, the person entitled to the land cannot be traced².

Where any relevant enactment provides for land to revert to the ownership of any person at any time, being a time when the land ceases, or has ceased for a specified period, to be used for particular purposes, the enactment has effect, and is deemed always to have had effect³, as if it provided (instead of for the reverter) for the land to be vested after that time, on the trust arising under this provision, in the persons in whom it was vested immediately before that time⁴. The trust so arising in relation to any land is a trust for the persons who, but for these provisions, would from time to time be entitled to the ownership of the land by virtue of its reverter with a power, without consulting them, to sell the land and to stand possessed of the net proceeds of sale (after payment of costs and expenses) and of the net rents and profits until sale (after payment of rates, taxes, costs of insurance, repairs and other outgoings) in trust for those persons; but they are not to be entitled by reason of their interest to occupy the land⁵. Where a trust in relation to any land has arisen or is treated as having arisen⁶ and immediately before that time the land was vested in any persons in their capacity as the minister and churchwardens of any parish⁷, those persons are treated as having become trustees⁸ in that capacity and, accordingly, their interest in the land passes and, if the case so requires, is treated as having passed to their successors from time to time⁹.

These provisions do not confer any right on any person as a beneficiary in relation to any property in respect of which that person's claim was statute-barred¹⁰ before 17 August 1987¹¹ or in relation to any property derived from any such property or in relation to any rents or profits received, or breach of trust committed, before that date¹².

Where any property is held by any persons as trustees of a trust which has arisen¹³ and there are no beneficiaries of that trust¹⁴, the trustees have no power to act in relation to that property except¹⁵: (1) for the purposes for which they could have acted if these provisions¹⁶ had not been passed¹⁷; or (2) for the purpose of securing the establishment of a scheme of the Charity Commission¹⁸ or the making of an order under the special powers¹⁹ as to trusts for religious education²⁰.

1 I.e. the relevant statutory purpose under which the grant was made, rather than the purposes specified in the grant itself if narrower: see *Fraser v Canterbury Diocesan Board of Finance (No 2)* [2005] UKHL 65 at 14-20, [2006] 1 AC 377 at 14-20, [2006] 1 All ER 315, at 14-20 per Lord Hoffman and at 57-59 per Lord Walker of Gestingthorpe.

2 See the Reverter of Sites Act 1987; the text and notes 3-20; and PARA 71. The need for reform in this area was identified by the Law Commission in its report *Rights of Reverter* (Cmnd 8410) (1981). Nothing in the Reverter of Sites Act 1987 requires any land which is or has been the subject of any grant, conveyance or other assurance under any relevant enactment to be treated as or as having been settled land: s 6(1). The power conferred by the School Sites Act 1841 s 14 (power of sale etc) is exercisable at any time in relation to land which, but for the exercise of the power, a trust might subsequently arise under the Reverter of Sites Act 1987 s 1; and the exercise of that power in respect of any land prevents any trust from arising under s 1 in relation to that land or any land representing the proceeds of sale of that land: s 6(2); and see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1354. 'Relevant enactment' means any enactment contained in the School Sites Acts (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1354), the Literary and Scientific Institutions Act 1854 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 939 et seq) or the Places of Worship Sites Act 1873 (see **ECCLESIASTICAL LAW** vol 14 PARA 1065); Reverter of Sites Act 1987 s 7(1). References to land include references to: (1) any part of any land which has been the subject of a grant, conveyance or other assurance under any relevant enactment; and (2) any land an interest in which (including any future or contingent interest arising under any such enactment) belongs to the Crown, the Duchy of Lancaster or the Duchy of Cornwall: s 7(2).

3 I.e. subject to the Reverter of Sites Act 1987 s 4: see PARA 71.

4 Reverter of Sites Act 1987 s 1(1).

5 Reverter of Sites Act 1987 s 1(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 2 para 6). The amendments made by the Trusts of Land and Appointment of Trustees Act 1996 do not affect any entailed interest created before its commencement (1 January 1997): s 25(4). The amendments made by the Trusts of Land and Appointment of Trustees Act 1996 in consequence of the abolition of the doctrine of conversion do not affect a trust created by a will if the testator died before 1 January 1997, and do not affect personal representatives of a person who died before that date: see s 25(5).

6 I.e. under the Reverter of Sites Act 1987 s 1(1) at such a time as is mentioned in that provision: see the text and notes 3-4.

7 For these purposes, 'churchwardens' include chapel wardens, 'minister' includes a rector, vicar or perpetual curate, and 'parish' includes a parish of the Church in Wales: Reverter of Sites Act 1987 s 1(6).

8 I.e. under the Reverter of Sites Act 1987 s 1.

9 Reverter of Sites Act 1987 s 1(3) (as amended: see note 5).

10 The reference to a person's claim being statute-barred is a reference to the Limitation Act 1980 providing that no proceedings are brought by that person to recover the property in respect of which the claim subsists: Reverter of Sites Act 1987 s 1(6). As to limitation see further **LIMITATION PERIODS**.

11 I.e. the commencement of the Reverter of Sites Act 1987.

12 Reverter of Sites Act 1987 s 1(4) (as amended: see note 5). Anything validly done before 17 August 1987 in relation to any land which by virtue of s 1 is deemed to have been held at the time in trust is, if done by the beneficiaries, deemed, so far as necessary for preserving its validity, to have been done by the trustees: s 1(4).

13 See note 8.

- 14 le in consequence the Reverter of Sites Act 1987 s 1(4): see the text and notes 10-12.
- 15 Reverter of Sites Act 1987 s 1(5).
- 16 le the Reverter of Sites Act 1987.
- 17 Reverter of Sites Act 1987 s 1(5)(a).
- 18 le a scheme under the Reverter of Sites Act 1987 s 2: see PARA 71. As to the Charity Commission see PARAS 538-572.
- 19 le under the Education Act 1996 s 554: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1435.
- 20 Reverter of Sites Act 1987 s 1(5)(b) (amended by the Education Act 1996 Sch 37 para 67). An order made under the Education Act 1996 s 554 (see PARA 183) with respect to so much of any endowment as consists of land in relation to which a trust under the Reverter of Sites Act 1987 s 1 has arisen or will arise after the land ceased or ceases to be used for particular purposes, or any other property subject to a trust under that provision may extinguish any rights to which a person is or may become entitled as a beneficiary under the trust: s 5(1) (s 5 amended by the Education Act 1996 Sch 37 para 67). The Secretary of State or the Welsh Ministers may not by an order under the Education Act 1996 s 554 extinguish any such rights unless he or they are satisfied that all reasonably practicable steps to trace the persons who are or may become entitled to any of those rights have been taken and that either: (1) there is no claim by any person to be a person who is or may become entitled which is outstanding, or which has at any time been accepted as valid by the trustees or by persons whose acceptance binds or will bind the trustees, or which has been upheld in proceedings that have been concluded; or (2) consent to the making of an order under s 554 has been given by every person whose claim to be such a person is outstanding or has been so accepted or upheld: Reverter of Sites Act 1987 s 5(2) (as so amended). A claim by any person to be a beneficiary under a trust is outstanding if it has been notified to the trustees, it has not been withdrawn and proceedings for determining whether it ought to have been upheld have not been commenced or (if commenced) have not been concluded: s 7(3). Proceedings in relation to any person's claim are not treated as concluded where the time for appealing is unexpired or an appeal is pending unless that person has indicated his intention not to appeal or to continue with his appeal: s 7(4).
- Where applications for the extinguishment of the rights of any beneficiaries are made with respect to the same trust property to the Secretary of State, or the Welsh Ministers, under the Education Act 1996 s 554 and to the Charity Commission under the Reverter of Sites Act 1987 s 2 (see PARA 71) the Commission must not consider or further consider the application made to it unless the Secretary of State, or the Welsh Ministers, either consent to the consideration of the application made to the Charity Commission before the application made to him or them or disposes of the application made to him or them without extinguishing the rights of one or more of the beneficiaries: s 5(3) (amended by the Education Act 1996 Sch 37 para 67; and the Charities Act 2006 Sch 8 para 84).
- Trustees of a trust arising under the Reverter of Sites Act 1987 s 1 may pay or apply capital money for the purposes of any provision of s 5 or the Education Act 1996 s 554: Reverter of Sites Act 1987 s 5(4) (amended by the Education Act 1996 Sch 37 para 67).
- As to the Secretary of State and the Welsh Ministers see PARA 579.

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71. Charity Commission's schemes under the Reverter of Sites Act 1987.

Where any persons hold any property as trustees of a trust which has arisen under the provisions of the Reverter of Sites Act 1987¹, the Charity Commission², on the application of the trustees³, may by order⁴ establish a scheme which extinguishes the rights of the beneficiaries under the trust and requires the trustees to hold the property on trust for such charitable purposes as may be specified in the order⁵. The charitable purposes must be such as the Charity Commission considers appropriate⁶, having regard to: (1) the desirability of securing that the property is held for charitable purposes (the 'new purposes') which are close to the purposes, whether charitable or not, for which the trustees held the relevant land⁷ before the

cesser of use in consequence of which the trust arose (the 'former purposes')⁸; and (2) the need for the new purposes to be capable of having a significant social or economic effect⁹. In determining the character of the former purposes, the Commission may, if it thinks it appropriate to do so, give greater weight to the persons or locality benefited by those purposes than to the nature of the benefit¹⁰.

1 le under the Reverter of Sites Act 1987 s 1: see PARA 70.

2 As to the Charity Commission see PARAS 538-572.

3 As to the application by trustees see PARA 72.

4 As to orders to establish schemes of the Charity Commission see PARA 73.

5 Reverter of Sites Act 1987 s 2(1) (amended by the Charities Act 2006 Sch 8 para 82(1), (2)). The Reverter of Sites Act 1987 s 2(1) is expressed to be subject to the provisions of ss 2(2)-(8), 3, 4 (see PARAS 72-73): see s 2(1). An order may contain any such provision as may be contained in an order made by the High Court for establishing a scheme for the administration of a charity and has the same effect as an order so made: s 2(2). As to the general jurisdiction and powers of the court in relation to the settlement of schemes see PARA 181 et seq.

6 Reverter of Sites Act 1987 s 2(3) (substituted by the Charities Act 2006 Sch 8 para 82(3)).

7 'Relevant land', in relation to a trust which has arisen under Reverter of Sites Act 1987 s 1 (see PARA 70), means the land which but for the Reverter of Sites Act 1987 would have reverted to the persons who are the first beneficiaries under the trust: s 7(1).

8 Reverter of Sites Act 1987 s 2(3A)(a) (s 2(3A), (3B) added by the Charities Act 2006 Sch 8 para 82(3)).

9 Reverter of Sites Act 1987 s 2(3A)(b) (as added: see note 8).

10 Reverter of Sites Act 1987 s 2(3B) (as added: see note 8).

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72. Applications for Charity Commission schemes under the Reverter of Sites Act 1987.

The Charity Commission may not make any order¹ establishing a scheme under the Reverter of Sites Act 1987² unless the trustees have satisfied the requirements for the making of an application for a scheme. These requirements are satisfied if, before the application is made³:

- 36 (1) notices⁴ have been published in two national newspapers and in a local newspaper circulating in the locality where the relevant land⁵ is situated⁶;
- 37 (2) each of the notices specified a period for the notification to the trustees of claims by beneficiaries, being a period ending not less than three months after the date of publication of the last of those notices to be published⁷;
- 38 (3) that period has ended⁸;
- 39 (4) for a period of not less than 21 days during the first month of that period, a copy of one of the notices was affixed to an object on the relevant land in such a position and manner as, so far as practicable, to make the notice easy for members of the public to see and read it without going on to the land⁹; and
- 40 (5) the trustees have considered what other steps could be taken to trace the persons who are or may be beneficiaries and to inform those persons of the

application for the scheme and have taken such of the steps considered by them as it was reasonably practicable for them to take¹⁰.

The above requirements do not apply in the case of an application made in respect of any trust if the time when the trust is treated as having arisen was before 17 August 1987¹¹ and more than 12 years have elapsed since then¹².

The Commission must refuse to consider an application by the trustees under these provisions unless it is accompanied by a statutory declaration by the applicants that the requirements for the making of an application¹³ are satisfied with respect to the making of the application or, if the declaration so declares, do not apply, and that one of two specified conditions¹⁴ is identified in the declaration and fulfilled¹⁵. The declaration is conclusive for these purposes of the matters declared in it¹⁶.

1 As to orders to establish Charity Commission schemes see PARA 73. As to the Charity Commission see PARAS 538-572.

2 *Ie* under the Reverter of Sites Act 1987 s 2: see PARAS 71, 73.

3 Reverter of Sites Act 1987 s 3(1).

4 A notice must: (1) set out the circumstances that have resulted in a trust having arisen under the Reverter of Sites Act 1987 s 1 (see PARA 70); (2) state that an application is to be made for the establishment of a scheme with respect to the property subject to the trust; and (3) contain a warning to every beneficiary that, if he wishes to oppose the extinguishment of his rights, he ought to notify his claim to the trustees in the manner, and within the period, specified in the notice: s 3(2).

5 As to the meaning of 'relevant land' see PARA 71 note 7. As to references to land see PARA 70 note 1.

6 Reverter of Sites Act 1987 s 3(1)(a).

7 Reverter of Sites Act 1987 s 3(1)(b).

8 Reverter of Sites Act 1987 s 3(1)(c).

9 Reverter of Sites Act 1987 s 3(1)(d). Where at the time when the trustees publish a notice for the purposes of s 3(2) (see note 4) the relevant land is not under their control and it is not reasonably practicable for them to arrange for a copy to be affixed as so required, s 3(1)(d) is to be disregarded: s 3(3).

10 Reverter of Sites Act 1987 s 3(1)(e).

11 *Ie* the commencement of the Reverter of Sites Act 1987.

12 Reverter of Sites Act 1987 s 3(4).

13 *Ie* the requirements under the Reverter of Sites Act 1987 s 3: see the text and notes 1-12.

14 *Ie* one of the conditions in the Reverter of Sites Act 1987 s 2(6): see PARA 73 head (2) in the text.

15 Reverter of Sites Act 1987 s 2(7) (amended by the Charities Act 2006 Sch 8 para 82(1), (5)).

16 Reverter of Sites Act 1987 s 2(7) (see note 15).

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73. Orders of the Charity Commission establishing schemes under the Reverter of Sites Act 1987.

The Charity Commission¹ may not make any order establishing a scheme under the Reverter of Sites Act 1987² unless:

- 41 (1) the requirements³ for making an application for the order are satisfied or do not apply⁴;
- 42 (2) one of the following conditions is fulfilled⁵:
- 1
 - 1. (a) there is no claim by any person to be a beneficiary in respect of rights proposed to be extinguished which is outstanding⁶ or which has at any time been accepted as valid by the trustees or by persons whose acceptance binds them or which has been upheld in proceedings that have been concluded⁷; or
 - 2. (b) consent to the establishment of such a scheme has been given by every person whose claim to be a beneficiary in respect of those rights is outstanding or has been so accepted or upheld⁸;
- 2
 - 43 (3) public notice of the Commission's proposals has been given inviting representations to be made to it within a period specified in the notice, being a period ending not less than a month after the date of the giving of the notice⁹; and
 - 44 (4) that period has ended and the Commission has taken into consideration any representations which have been made within that period and not withdrawn¹⁰.

An order made on an application¹¹ with respect to any trust must be so framed as to secure that if a person who, but for the making of the order, would have been a beneficiary under the trust and has not consented to the establishment of a scheme under these provisions, notifies a claim to the trustees within the period of five years after the date of the making of the order, that person may be paid an amount equal to the value of his rights at the time of their extinguishment¹².

Where an order¹³ is made by the Commission: (i) public notice of it must be given in such manner as it thinks sufficient and appropriate¹⁴; and (ii) a copy of the order must, for not less than one month after the date of giving the notice, be available for public inspection at all reasonable times at the Commission's office and at some convenient place in the locality where the land is situated¹⁵. The notice must contain such particulars of the order, or such directions for obtaining information about it, as the Commission thinks sufficient and appropriate¹⁶.

An appeal against an order¹⁷ may be brought to the Tribunal¹⁸ by any of the following: (A) the Attorney General¹⁹; (B) the trustees of the trust established under the order²⁰; (C) a beneficiary of, or the trustees of, the trust in respect of which the application for the order had been made²¹; (D) any person interested in the purposes for which the last mentioned trustees or any of their predecessors held the relevant land²² before the cesser of use in consequence of which the trust arose²³; or (E) any two or more inhabitants of the locality where that land is situated²⁴.

Trustees of a trust which has arisen²⁵ may pay or apply capital money for certain purposes²⁶ under the Reverter of Sites Act 1987²⁷.

1 As to the Charity Commission see PARAS 538-572.

2 Ie a scheme under the Reverter of Sites Act 1987 s 2: see PARA 71.

3 Ie the requirements of the Reverter of Sites Act 1987 s 3: see PARA 72.

4 Reverter of Sites Act 1987 s 2(5)(a) (amended by the Charities Act 2006 Sch 8 para 82(1), (4)). The reference in the text to when the requirements for making an application for the order do not apply is a reference to where they do not apply by virtue of the Reverter of Sites Act 1987 s 3(4) (see PARA 72): see s 2(5) (a) (as so amended).

- 5 Reverter of Sites Act 1987 s 2(5)(b) (amended by the Charities Act 2006 Sch 8 para 82(1), (4)).
- 6 As to where a claim is outstanding see PARA 70 note 20.
- 7 Reverter of Sites Act 1987 s 2(6)(a).
- 8 Reverter of Sites Act 1987 s 2(6)(b).
- 9 Reverter of Sites Act 1987 s 2(5)(c) (amended by the Charities Act 2006 Sch 8 para 82(1), (4)). The notice must contain such particulars of the Commission's proposals or such directions for obtaining information about them and must be given in such manner as it thinks sufficient and appropriate; a further such notice is not required where the Commission decides, before proceeding with any proposals of which notice has been given, to modify them: the Reverter of Sites Act 1987 s 2(8) (amended by the Charities Act 2006 Sch 8 para 82(1), (6)).
- 10 Reverter of Sites Act 1987 s 2(5)(d) (amended by the Charities Act 2006 Sch 8 para 82(1), (4)).
- 11 As to the application by trustees see PARA 72.
- 12 Reverter of Sites Act 1987 s 2(4).
- 13 Ie under the Reverter of Sites Act 1987 s 2: see the text and notes 1-12; and PARA 71.
- 14 Reverter of Sites Act 1987 s 4(1)(a) (amended by the Charities Act 2006 Sch 8 para 83(1), (2)).
- 15 Reverter of Sites Act 1987 s 4(1)(b) (amended by the Charities Act 2006 Sch 8 para 83(1), (2)).
- 16 Reverter of Sites Act 1987 s 4(1) (amended by the Charities Act 2006 Sch 8 para 83(1), (2)).
- 17 See note 13.
- 18 As to the Tribunal see PARA 573 et seq.
- 19 Reverter of Sites Act 1987 s 4(2)(a) (substituted by the Charities Act 2006 Sch 8 para 83(3)).
- 20 Reverter of Sites Act 1987 s 4(2)(b) (substituted by the Charities Act 2006 Sch 8 para 83(3)).
- 21 Reverter of Sites Act 1987 s 4(2)(c) (substituted by the Charities Act 2006 Sch 8 para 83(3)).
- 22 As to the meaning of 'relevant land' see PARA 71 note 7.
- 23 Reverter of Sites Act 1987 s 4(2)(d) (substituted by the Charities Act 2006 Sch 8 para 83(3)). The reference to the trust arising in the text is a reference to a trust arising under the Reverter of Sites Act 1987 s 1 (see PARA 70): see s 4(2)(d) (substituted by the Charities Act 2006 Sch 8 para 83(3)).
- 24 Reverter of Sites Act 1987 s 4(2)(e) (substituted by the Charities Act 2006 Sch 8 para 83(3)). The substitution made by the Charities Act 2006 Sch 8 para 83(3) does not affect the operation of the Reverter of Sites Act 1987 in relation to any appeal brought in the High Court before 18 March 2008 (ie the day on which the substitution came into force): Charities Act 2006 Sch 10 para 18.
- 25 Ie under the Reverter of Sites Act 1987 s 1: see PARA 70.
- 26 Ie for the purposes of the Reverter of Sites Act 1987 s 2 (see the text and notes 1-12), s 3 (see PARA 72) or s 4 (see note 16) (see the text and notes 13-24).
- 27 Reverter of Sites Act 1987 s 4(5). The Charities Act 1993 ss 89, 91, (see PARAS 549, 550) (supplemental provisions with respect to orders and appeals) apply in relation to, and to appeals against, orders under the Reverter of Sites Act 1987 s 2 as they apply in relation to, and to appeals against, orders under the Charities Act 1993: Reverter of Sites Act 1987 s 4(4) (amended by the Charities Act 2006 Sch 6 para 24, Sch 8 para 83, Sch 9).

74. Writing generally necessary.

Assurances in favour of a charity generally take the form of a conveyance on trust or a declaration of trust; but an express trust is not necessary, since the Crown as *parens patriae* is the trustee of funds given to charity without trustees or objects selected or without any express trust¹.

Charitable trusts declared in respect of land² since 1925 must be manifested and proved by some writing signed by some person who is able to declare the trust or by his will³, but trusts of personalty are valid without evidence in writing⁴.

A charitable trust⁵, like a private trust⁶, may be created by informal as well as by technical language, provided that the donor's intention to devote the property to charity is clear. Precatory or recommendatory words have frequently been held to create trusts where the testator's intention has been held to be imperative⁷. Similarly, provisions in which the word 'condition' occurs may create trusts⁸.

In the case of a charitable gift, the court pays more regard to the intention than to the form of conveyance; for this reason an estate in fee simple might pass to a charity even though the conveyance contained no words of limitation, if it was clear that a gift to charity in perpetuity was intended⁹. A gift which is exclusively charitable made by will may be widened, and so invalidated, by codicil if that is the necessary implication from the words used¹⁰.

A gift may be made to charity by means of a power of appointment¹¹. An exercise of a power defective as not complying with the terms of the power will be good if not otherwise invalid¹².

A voluntary conveyance of lands to charity is not avoided by a subsequent conveyance for value unless it was made with the intention of defrauding the purchaser under the subsequent conveyance¹³.

1 *Moggridge v Thackwell* (1803) 7 Ves 36 at 69, 83 per Lord Eldon LC (affd (1807) 13 Ves 416, HL); *Morice v Bishop of Durham* (1805) 10 Ves 522 at 541 per Lord Eldon LC; *Ommanney v Butcher* (1823) Turn & R 260 at 271 per Plumer MR: provided there is certainty of intention (see PARA 84). See also PARA 509. As to the law of trusts generally see **TRUSTS**.

2 As to the meaning of 'land' see the Law of Property Act 1925 s 205(1)(ix); and **REAL PROPERTY** vol 39(2) (Reissue) PARA 77.

3 See the Law of Property Act 1925 s 53(1)(b). In the absence of such writing there would be a resulting trust for the settlor (cf *Hodgson v Marks* [1971] Ch 892, [1971] 2 All ER 684, CA, a non-charity trust case). The requirement of evidence in writing does not apply to resulting, implied or constructive trusts (see the Law of Property Act 1925 s 53(2)) but a charitable trust is hardly likely to arise in these forms. However, see *Re Tyler's Fund Trusts*, *Graves v King* [1967] 3 All ER 389, [1967] 1 WLR 1269.

4 *Lyell v Kennedy* (1889) 14 App Cas 437 at 457, HL, per Lord Selborne. See further **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 24; **TRUSTS** vol 48 (2007 Reissue) PARA 644.

5 *Salisbury v Denton* (1857) 3 K & J 529; *Goodman v Saltash Corpn* (1882) 7 App Cas 633 at 642, HL, where Lord Selborne LC said it was immaterial whether the words used were 'trust', 'intent', 'purpose', 'proviso' or 'condition'.

6 *Brown v Higgs* (1803) 8 Ves 561; *Re Williams, Williams v Williams* [1897] 2 Ch 12 at 21-22, CA, per Lindley LJ. A private trust is for the benefit of ascertained or ascertainable individuals. As to private trusts see **TRUSTS** vol 48 (2007 Reissue) PARA 631.

7 *Re Burley, Alexander v Burley* [1910] 1 Ch 215; and see **TRUSTS** vol 48 (2007 Reissue) PARA 651. See also *A-G v Davies* (1802) 9 Ves 535 at 546 per Lord Eldon LC; *Kirkbank v Hudson* (1819) 7 Price 212; and *Pilkington v Boughiey* (1841) 12 Sim 114. In those cases the trust was established, but held void as infringing the mortmain law then in force. The mortmain statutes have been repealed: see PARAS 82-83.

8 See PARA 75.

9 *A-G v Berwick-upon-Tweed Corpn* (1829) Taml 239 at 246 per Leach MR. If there was no indication that a gift to charity in perpetuity was intended, a grant to a person for the benefit of a charity containing no words of limitation would, it is conceived, have given the charity the benefit of the grant merely during the life of the grantee.

10 *Wheeler v Sheer* (1730) Mos 288, where a gift for such charitable uses as the testator should appoint by codicil was followed by a codicil giving the property to such uses and purposes (omitting the word 'charitable') as he should direct; explained in *Moggridge v Thackwell* (1803) 7 Ves 36 at 79 per Lord Eldon LC; *Mills v Farmer* (1815) 1 Mer 55 at 72 per Lord Eldon LC. See also *Charitable Donations Comrs v Sullivan* (1841) 1 Dr & War 501 at 507.

11 *Cook v Duckenfield* (1743) 2 Atk 562 at 567 per Lord Hardwicke LC. As to powers of appointment see **POWERS** vol 36(2) (Reissue) PARA 205 et seq.

12 *Sayer v Sayer, Innes v Sayer* (1849) 7 Hare 377; affd sub nom *Innes v Sayer* (1851) 3 Mac & G 606, where a number of authorities are cited. See **POWERS** vol 36(2) (Reissue) PARA 362.

13 *Ramsay v Gilchrist* [1892] AC 412, PC. See also the Law of Property Act 1925 s 173; and **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 868 et seq. See also *A-G v Newcastle Corpn* (1842) 5 Beav 307 at 312 per Lord Langdale MR (affd sub nom *Newcastle-upon-Tyne Corpn v A-G* (1845) 12 Cl & Fin 402, HL); *Trye v Gloucester Corpn* (1851) 14 Beav 173.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(i) Creation by Assurance/75. Condition creating a trust.

75. Condition creating a trust.

A trust is created where the whole of the property is devoted to purposes which exclude all the donee's beneficial interest, even though the words used are primarily words of condition¹; or where property is given upon condition that a fixed and definite sum, which does not exhaust the entire revenue, shall be applied in a specified charitable way². On the other hand, where property is given on condition that an indefinite sum shall be expended for a certain purpose, it is a gift upon condition, and not a trust; and the donee is entitled to the beneficial interest in the property³. It is a gift upon condition and not a trust where the gift is on condition that, for example, the donees perform certain duties⁴, or a minister preach in a black gown⁵.

1 *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1 ('for this intent and purpose and upon this condition'); *Merchant Taylors' Co v A-G* (1871) 6 Ch App 512 ('to this intent and upon this condition'); *Wright v Wilkin* (1862) 2 B & S 259, Ex Ch. See also *Goodman v Saltash Corpn* (1882) 7 App Cas 633 at 642, HL, per Lord Selborne LC; *Re Christchurch Inclosure Act* (1888) 38 ChD 520 at 531, CA, per Lindley LJ; Duke on Charitable Uses, ed Bridgman (1805) 123-124, 137.

2 *A-G v Grocers' Co* (1843) 6 Beav 526. See also *Re Richardson, Shuldham v Royal National Lifeboat Institution* (1887) 56 LJCh 784 (condition to construct and maintain lifeboats attached to a legacy to a charitable society construed as a trust).

3 *Jack v Burnett* (1846) 12 Cl & Fin 812, HL (gift to a college on condition that three bursars should be maintained); *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA (condition that a tomb should be kept in repair); *Re Rosenblum, Rosenblum v Rosenblum* (1924) 131 LT 21.

4 *A-G v Christ's Hospital* (1830) 1 Russ & M 626; *A-G v Cordwainers' Co* (1833) 3 My & K 534 at 543 per Leach MR: the imposition of a penalty for non-performance of the condition implies a benefit, if the condition be performed, and is inconsistent with any other intention than that the testator meant to give a beneficial interest to the company upon the terms of complying with the directions contained in his will.

5 *Re Robinson, Wright v Tugwell* [1897] 1 Ch 85, CA; but see *Robinson, Wright v Tugwell* [1923] 2 Ch 332, where this condition was dispensed with.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(i) Creation by Assurance/76. Charge or trust for charity is binding.

76. Charge or trust for charity is binding.

According to the ancient equitable doctrine that no person can acquire an estate with notice of a charitable use without being bound by it, the grantee or devisee of an estate subject to a charge in favour of a charity is a trustee, at any rate until separate trustees of the charge are appointed¹. If, however, the conveyance or will appoints trustees of the charge, it seems that no fiduciary obligation is imposed on the grantee or devisee².

There is a distinction between a charge and a trust in favour of charity³. If a devise is made subject to the payment of an annuity to a charitable institution, it is a question of construction⁴ whether the devisee is a trustee of the annuity for the charity, or the charity merely has a right to recover the annuity as a charge⁵. A charitable trust may be so limited as to affect part only of the property granted or devised, as where property is given subject to⁶, or in trust to make⁷, specified charitable payments which do not exhaust the whole estate⁸. In those cases where the donor has not expressed a general intention to devote the whole property to charity, the donee takes beneficially subject only to the specific appropriation⁹, unless it appears that he was intended to take only as a trustee, in which case a resulting trust arises in favour of the donor and his successors in title¹⁰.

1 *Charitable Donations and Bequests Comrs v Wybrants* (1845) 2 Jo & Lat 182 at 198 per Lord Sugden LC. See also the non-charity cases of *Hodge v Churchward* (1847) 16 Sim 71, and *Cunningham v Foot* (1878) 3 App Cas 974, HL.

2 *Cunningham v Foot* (1878) 3 App Cas 974 at 987, HL, per Lord Cairns LC.

3 See *Charitable Donations and Bequests Comrs v Wybrants* (1845) 2 Jo & Lat 182 at 198 per Lord Sugden LC.

4 See *Cunningham v Foot* (1878) 3 App Cas 974, HL.

5 The question is of importance in relation to the operation of the Limitation Acts; cf the cases cited in note 1.

6 *Southmolton Corp v A-G* (1854) 5 HL Cas 1; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369. Cf gifts on condition: see PARAS 135-136.

7 *Beverley Corp v A-G* (1857) 6 HL Cas 310.

8 *Merchant Taylors' Co v A-G* (1871) 6 Ch App 512 at 520 per James LJ; *A-G v Cordwainers' Co* (1833) 3 My & K 534; *A-G v Trinity College, Cambridge* (1856) 24 Beav 383.

9 *A-G v Bristol Corp* (1820) 2 Jac & W 294; *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1 at 9 per Lord Chelmsford; *A-G v Grocers' Co* (1843) 6 Beav 526; *A-G v Skinners' Co* (1827) 2 Russ 407.

10 *Re Stanford, Cambridge University v A-G* [1924] 1 Ch 73. See also PARA 170.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(i) Creation by Assurance/77. Equitable doctrines.

77. Equitable doctrines.

The ordinary law as to ademption applies to legacies given to charities¹, as, presumably, do the doctrines of performance, satisfaction and election². Where a legacy is given to the trustees of an endowment fund, it may be adeemed by a gift to the same trustees by the testator during his life³.

1 *Twining v Powell* (1845) 2 Coll 262; *Makeown v Ardagh* (1876) IR 10 Eq 445. See **EQUITY** vol 16(2) (Reissue) PARA 739 et seq; **WILLS** vol 50 (2005 Reissue) PARA 445 et seq.

2 As to election, satisfaction and ademption, and performance see **EQUITY** vol 16(2) (Reissue) PARAS 724 et seq, 739 et seq and 754 et seq respectively.

3 *Re Corbett, Corbett v Lord Cobham* [1903] 2 Ch 326.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(ii) Creation without an Assurance/78. Charity established by voluntary subscriptions.

(ii) Creation without an Assurance

78. Charity established by voluntary subscriptions.

A charity created or established by voluntary subscriptions does not differ from charities established in other ways, provided that a fund exists which is subject to a charitable trust¹.

1 *A-G v Kell* (1840) 2 Beav 575; *Re Welsh Hospital (Netley) Fund, Thomas v A-G* [1921] 1 Ch 655; *Re British Red Cross Balkan Fund, British Red Cross Society v Johnson* [1914] 2 Ch 419; *Re North Devon and West Somerset Relief Fund Trusts, Baron Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260; *Re Lord Mayor of Belfast's Air Raid Distress Fund* [1962] NI 161; cf *Re Gillingham Bus Disaster Fund, Bowman v Official Solicitor* [1959] Ch 62, [1958] 2 All ER 749, CA. As to funds raised by contributions see PARA 105.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(ii) Creation without an Assurance/79. Secret trusts.

79. Secret trusts.

A donor may make an effective disposition in favour of charity by means of a non-charitable gift affected by a secret trust for charity, whether or not mentioned in the instrument of gift, as by a direction to a donee to use a gift for the charitable purposes agreed between donor and donee¹. A testator also may make a testamentary disposition to charity subject to a secret trust for non-charitable purposes².

The requisites for establishing the existence of a secret trust in favour of charity do not differ from those for other secret trusts³. They include the necessity of the testator's intention being communicated to the donee and accepted by him⁴, and the admissibility of evidence to prove the terms of a secret charitable trust when its existence is admitted⁵; but where there is no communication in a testator's lifetime of his intention to create a secret trust for charity⁶, or where no secret trust is proved⁷, the donee takes absolutely, unless it appears that he is a trustee and takes upon a resulting trust⁸. A secret trust is a personal obligation binding the

individual donee. If he renounces or disclaims, or dies in the lifetime of the donor, the trust cannot operate⁹.

1 *Re Huxtable, Huxtable v Crawford* [1902] 2 Ch 793, CA; cf *Re Tyler's Fund Trust, Graves v King* [1967] 3 All ER 389, [1967] 1 WLR 1269.

2 *Re Young, Young v Young* [1951] Ch 344, [1950] 2 All ER 1245.

3 As to secret trusts see further **TRUSTS** vol 48 (2007 Reissue) PARA 672 et seq. As to evidence of secret trusts see **WILLS** vol 50 (2005 Reissue) PARAS 509-511.

4 *Re Huxtable, Huxtable v Crawford* [1902] 2 Ch 793, CA; *Moss v Cooper* (1861) 1 John & H 352.

5 *Edwards v Pike* (1759) 1 Eden 267.

6 *Juniper v Batchellor* (1868) 19 LT 200; *Carter v Green* (1857) 3 K & J 591; *Littledale v Bickersteth* (1876) 24 WR 507.

7 *Re Downing's Residuary Estate* (1888) 60 LT 140; *Baldwin v Baldwin* (1856) 22 Beav 413.

8 *Ommanney v Butcher* (1823) Turn & R 260.

9 *Re Maddock, Llewelyn v Washington* [1902] 2 Ch 220 at 231, CA, per Cozens-Hardy LJ.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(iii) Establishment not to Contravene General Law/80. Charity constituting nuisance.

(iii) Establishment not to Contravene General Law

80. Charity constituting nuisance.

Except under statutory authority, a charity or charitable institution may not be established in such manner or place as to constitute a nuisance¹, and an injunction² will be granted to restrain the establishment of a charity which, though charitable, will constitute a nuisance³.

1 As to nuisance see **NUISANCE** vol 78 (2010) PARA 101 et seq.

2 As to injunctions see **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq.

3 *Baines v Baker* (1752) Amb 158; *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL; *Fleet v Metropolitan Asylums Board* (1886) 2 TLR 361, CA; *Matthews v Sheffield Corp* (1887) 31 Sol Jo 773; *Bendelow v Wortley Union Guardians* (1887) 57 LJCh 762; *A-G v Manchester Corp* [1893] 2 Ch 87; *A-G v Nottingham Corp* [1904] 1 Ch 673. For the class of hospital which has been held to constitute a nuisance see *Tod-Heatly v Benham* (1888) 40 ChD 80, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(iii) Establishment not to Contravene General Law/81. Charity in breach of restrictive covenant.

81. Charity in breach of restrictive covenant.

Charitable institutions such as hospitals and institutions for educating and lodging girls, may not be established in premises subject to a restrictive covenant for use as a private dwelling

house only, and not for the purposes of trade or business; and an injunction will be granted to restrain the establishment of an institution which, though charitable, will constitute a breach of covenant¹.

¹ *German v Chapman* (1877) 7 ChD 271, CA (institution for education and lodging of girls); *Bramwell v Lacy* (1879) 10 ChD 691; *Portman v Home Hospitals Association* (1879) 27 ChD 81n; *Frost v King Edward VII Welsh etc Association* [1918] 2 Ch 180 (compromised on appeal 35 TLR 138, CA) (hospitals); *Rolls v Miller* (1884) 27 ChD 71, CA (institution for working girls); and see *Barnard Castle UDC v Wilson* [1901] 2 Ch 813 at 817 per Buckley LJ (carrying on a school is carrying on a business), affd on this point but revsd on other grounds [1902] 2 Ch 746 at 755, CA, per Vaughan Williams LJ, and at 758 per Stirling LJ. Cf *C & G Homes Ltd v Secretary of State for Health* [1991] Ch 365, [1991] 2 All ER 841, CA. As to restrictive covenants generally see **EQUITY** vol 16(2) (Reissue) PARA 613 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(iv) Repeal of Law of Mortmain/82. Mortmain restrictions.

(iv) Repeal of Law of Mortmain

82. Mortmain restrictions.

Before 29 July 1960¹, assurances inter vivos of land, or of personal estate to be laid out in the purchase of land, in favour of charity were, with various exceptions, subject to certain restrictions: they had to take effect in possession; they might be made subject to certain reservations only; if not for valuable consideration, they had to be made not less than a certain period before the death of the donor; and they had to comply with certain provisions as to form and recording. If these restrictions were not complied with, the assurance was void.

Land might be assured by will to charity, but unless the recipient charity was authorised to retain the land by an order of the court or the Charity Commissioners (now the Charity Commission)², the land had to be sold within one year after the testator's death or such extended period as might be duly determined.

The law of mortmain also prohibited the assurance of land to charitable and other corporations otherwise than under royal licence or statutory authority. Any land assured contrary to this prohibition was forfeit to the Crown.

¹ Ie the date of the passing of the Charities Act 1960 (repealed). The various restrictions mentioned in the text were contained principally in the Mortmain and Charitable Uses Act 1888, the Mortmain and Charitable Uses Act 1891 and the Mortmain and Charitable Uses Act Amendment Act 1892, which were all, together with any enactments amending them, repealed by the Charities Act 1960: see s 38(1) (repealed). The full list of mortmain repeals is contained in Sch 7 Pt II (repealed).

² As to the Charity Commissioners see PARA 538.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(1) FORMAL REQUIREMENTS AND RESTRICTIONS/(iv) Repeal of Law of Mortmain/83. Repeal and consequential provisions.

83. Repeal and consequential provisions.

The law of mortmain was repealed by the Charities Act 1960¹. Various provisions consequential on the repeal were made as follows.

No right or title to any property may be defeated or impugned, and no assurance or disposition of property may be treated as void or voidable, by virtue of any of the enactments relating to mortmain which have been repealed², or any other enactment relating to mortmain, if on 29 July 1960 the possession was in accordance with that right or title or with that assurance or disposition, and no step has been taken to assert a claim by virtue of any such enactment³. However, this provision does not validate any assurance or disposition so as to defeat a right or title acquired by adverse possession before 29 July 1960⁴.

In relation to the wills of persons dying before 29 July 1960, the repeal of the Mortmain and Charitable Uses Act 1891 abrogates any requirement to sell land then unsold, but it does not enable effect to be given to a direction to lay out personal estate in land without an order under that Act, nor does it affect the power to make such an order⁵.

1 See the Charities Act 1960 ss 38(1), 48(2), Sch 7 Pt II (all repealed); and PARA 82 note 1.

2 See PARA 82 note 1.

3 Charities Act 1960 s 38(2) (repealed).

4 Charities Act 1960 s 38(2) proviso (repealed).

5 Charities Act 1960 s 38(3) (repealed).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(2) ESSENTIAL REQUIREMENTS/(i) Imperative Words creating a Trust/84. Words of trust.

(2) ESSENTIAL REQUIREMENTS

(i) Imperative Words creating a Trust

84. Words of trust.

As in the case of an ordinary trust, there must be certainty of intention on the donor's part to make a gift¹. The words used must be such that on the whole they ought to be construed as imperative²; a mere expression of desire or hope will not create a trust of any kind³. The word 'trust' itself need not be used⁴.

In the absence of a binding contract an expression of intention in a deceased's lifetime to give money to charity is not effective after death⁵.

1 As to certainty of intention see **TRUSTS** vol 48 (2007 Reissue) PARAS 649-652.

2 *Knight v Knight* (1840) 3 Beav 148 at 173 per Lord Langdale MR. See *Liverpool City Council v A-G* (1992) Times, 1 May.

3 See eg *Re Adams and Kensington Vestry* (1884) 27 ChD 394, CA.

4 As to where writing is generally necessary see PARA 74. See also **TRUSTS** vol 48 (2007 Reissue) PARA 650. As to whether contractual rights and obligations are created by subscribing to a charity see *Brooks v Richardson* [1986] 1 All ER 952, [1986] 1 WLR 385.

5 *Re Hudson, Creed v Henderson* (1885) 54 LJCh 811; *Sinnett v Herbert* (1871) LR 12 Eq 201; *Re Smith, Champ v Marshallsay* (1890) 64 LT 13.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(2) ESSENTIAL REQUIREMENTS/(ii) Certainty as to Subject Matter/85. Certainty as to trust fund.

(ii) Certainty as to Subject Matter

85. Certainty as to trust fund.

The general rule of equity that a gift will fail if the trust property cannot clearly be identified applies to charitable trusts¹. Thus, if the amount of a gift purporting to be made in favour of a charity cannot be ascertained, the gift fails², although a gift of a sum 'not exceeding' a named figure is construed as a gift of the named sum³.

1 As to certainty of subject matter in relation to trusts generally see **TRUSTS** vol 48 (2007 Reissue) PARAS 653-654.

2 *Hartshorne v Nicholson* (1858) 26 Beav 58 (where the amount of the gift was left blank). See also *Ewen v Bannerman* (1830) 2 Dow & Cl 74, HL; *Cherry v Mott* (1836) 1 My & Cr 123 (where an amount could only be ascertained by entering into an impossible contract); and the non-charity case of *Asten v Asten* [1894] 3 Ch 260. In *Dundee Magistrates v Morris* (1858) 3 Macq 134, HL (considered in *Fisk v A-G* (1867) LR 4 Eq 521, and *Re Birkett* (1878) 9 ChD 576), a will, in which the testator directed that a hospital for 100 boys should be established in Dundee without stating what amount should be applied to this object, was held to furnish a sufficient means of ascertaining the amount of the legacy. See also *Macduff v Spence's Trustees* 1909 SC 178, Ct of Sess (a trust to apply the interest of a fund or so much thereof as the trustees might deem expedient to charitable objects held valid; but this case is probably not good law in England).

3 *Thompson v Thompson* (1844) 1 Coll 381 at 395 per Knight Bruce V-C; *Gough v Bult* (1848) 16 Sim 45. However, see *Coxe v Basset* (1796) 3 Ves 155; and cf *Re Mills, Midland Bank Executor and Trustee Co Ltd v Board of Governors of United Birmingham Hospitals* [1953] 1 All ER 835, [1953] 1 WLR 554; *Re Vernon* (1957) Times, 27 June.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(2) ESSENTIAL REQUIREMENTS/(ii) Certainty as to Subject Matter/86. Gift of uncertain surplus.

86. Gift of uncertain surplus.

Where there is a gift of a fund to be applied in the first place to a particular purpose with a gift over of the surplus, then if the first purpose cannot be carried out because it is unlawful, but the amount which would have been required can be reasonably ascertained, the gift to charity of the surplus over that amount is valid¹. But where the first purpose is so indefinite that the amount required for it cannot be reasonably ascertained, so that there is no ascertainable surplus, the gift fails entirely². The result is the same where the testator, although estimating the cost of effecting the first purpose, gives his executors a discretion to exceed that amount³. An inquiry may be directed to ascertain the amount needed to fulfil the primary invalid purpose⁴.

However, where a fund is given primarily for a charitable purpose, but is subject to an invalid charge, as, for example, for the perpetual repair of a tomb not forming part of a church, there is no apportionment, for the whole fund goes to charity⁵.

1 *Dundee Magistrates v Morris* (1858) 3 Macq 134, HL; *Mitford v Reynolds* (1842) 1 Ph 185. See also *A-G v Parsons* (1803) 8 Ves 186 at 192 per Lord Eldon LC; and *Re Coxen, McCallum v Coxen* [1948] Ch 747 at 752, [1948] 2 All ER 492 at 498 per Jenkins J.

2 *Chapman v Brown* (1801) 6 Ves 404, explained in *Re Birkett* (1878) 9 ChD 576 at 579 per Jessel MR; *Cherry v Mott* (1836) 1 My & Cr 123 at 134 per Lord Langdale MR; *Cramp v Playfoot* (1858) 4 K & J 479; *Peek v Peek* (1869) 17 WR 1059; *Kirkmann v Lewis* (1869) 38 LJCh 570; *Re Taylor, Martin v Freeman* (1888) 58 LT 538; *Re Porter, Porter v Porter* [1925] Ch 746; *Re Dalziel, Midland Bank Executor and Trustee Co Ltd v St Bartholomew's Hospital* [1943] Ch 277, [1943] 2 All ER 656. The principle underlying this rule is that if the entire fund might have been properly applied to the first purpose, if it had been lawful, there would be no ascertainable residue for the second.

3 *Limbrey v Gurr* (1819) 6 Madd 151.

4 *Chapman v Brown* (1801) 6 Ves 404 at 410 per Grant MR; *Mitford v Reynolds* (1842) 1 Ph 185 at 199 per Lord Lyndhurst LC. See also *Dundee Magistrates v Morris* (1858) 3 Macq 134, HL. Where the invalid purpose was the repair of a tomb it was held that the gift failed to the extent of the capital representing the annual amount necessary to keep that tomb in repair, treating the capital as invested in consols: *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187 at 194 per North J.

5 *Kelly v A-G* [1917] 1 IR 183; *Re Rogerson, Bird v Lee* [1901] 1 Ch 715, following *Fisk v A-G* (1867) LR 4 Eq 521, *Re Birkett* (1878) 9 ChD 576, and *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187. In cases of this kind the obligation to repair the tomb is a moral one and is not legally binding: *Hunter v Bullock* (1872) LR 14 Eq 45; *Dawson v Small* (1874) LR 18 Eq 114 at 118 per Bacon V-C; *Re Williams* (1877) 5 ChD 735; *Re Taylor, Martin v Freeman* (1888) 58 LT 538; *Re Rogerson, Bird v Lee* [1901] 1 Ch 715 at 719 per Joyce J; *Re Manser, A-G v Lucas* [1905] 1 Ch 68 at 75 per Warrington J; *Re Dalziel, Midland Bank Executor and Trustee Co Ltd v St Bartholomew's Hospital* [1943] Ch 277, [1943] 2 All ER 656. As to monuments and tombs see PARA 61.

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87. Perpetual gift of income.

A gift of income in perpetuity to a charity does not necessarily carry with it the right to capital, as it would in the case of a gift to an individual, unless there is an intention discoverable from the terms of the gift that the capital should go with the income¹.

1 *Re Levy, Barclays Bank Ltd v Board of Guardians and Trustees for Relief of Jewish Poor* [1960] Ch 346, [1960] 1 All ER 42, CA.

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88. Additions to trust property.

When trustees hold an interest in land on charitable trusts and subsequently acquire a further interest in the same land, whether by gift or prescription, the whole is held subject to the original charitable trusts¹. Similarly, where a right of presentation in connection with a charitable corporation had been exercised for centuries by a municipal corporation, it was held that the municipal corporation held the right on trust for the charitable purposes for which it was originally created². Where trustees of land for charitable purposes acquire neighbouring

land and there is no evidence as to the source of the purchase money, it will not necessarily be presumed that the money used came out of the rents and profits of the original land, so that the whole is subject to the original trusts³.

If land is purchased partly with money belonging to a charity, the charity is entitled to such proportion of the land as the money contributed by the charity bears to the whole price⁴. Where a fund is given to specified charitable objects in fixed proportions, and the fund has increased, the rule is to apportion the accretions pro rata between the different objects⁵. Where the funds of one charity are inextricably mixed with the funds of another charity, both charities are entitled to participate pro rata in the increased value of the aggregate funds⁶.

1 *A-G v Cashel Corpn* (1842) 3 Dr & War 294.

2 *A-G v St John's Hospital, Bedford* (1864) 10 Jur NS 897.

3 *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1; but see *Re Ambleside Charity* (1870) 18 WR 663. These cases may be reconciled by contrasting the different nature and circumstances of the trustees in question.

4 *A-G v Newcastle Corpn* (1842) 5 Beav 307 (appeal compromised sub nom *Newcastle-upon-Tyne Corpn v A-G* (1845) 12 Cl & Fin 402, HL).

5 *A-G v Marchant* (1866) LR 3 Eq 424 (accretions arising from increased income). As to surplus income see PARAS 130-134.

6 *Edinburgh Corpn v Lord Advocate* (1879) 4 App Cas 823, HL.

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(iii) Trusts Exclusively Charitable

A. APART FROM STATUTE

89. Court must be able to execute trust.

The validity of a charitable trust does not depend on the application of the test of certainty of objects which is applicable to private trusts¹, but as with all trusts its validity does depend on whether it can be executed by the court². Provided a trust is restricted in its objects or purposes to that which the law regards as charitable, it does not fail because the particular objects are not defined³, for the court can execute a charitable trust by means of a scheme, notwithstanding that the particular objects are not stated⁴. The application of the trust property to charity must be obligatory⁵; and a gift cannot be treated as valid merely because the trustees have always applied the property to charity if they have a discretion under the trust instrument to apply it to non-charitable purposes⁶, although some such dispositions were validated by the Charitable Trusts (Validation) Act 1954⁷.

1 See *IRC v Broadway Cottages Trust* [1955] Ch 20, [1954] 3 All ER 120, CA; and **TRUSTS** vol 48 (2007 Reissue) PARA 655.

2 See *Morice v Bishop of Durham* (1805) 10 Ves 522. A trust of residue for charitable purposes is not rendered void for uncertainty by the fact that the trustees have power to retain investments indefinitely, for that alone cannot prevent the court from having jurisdiction to execute the trust in case of maladministration: *Dick v Audsley* [1908] AC 347, HL.

3 *Morice v Bishop of Durham* (1805) 10 Ves 522 at 527-528 per Lord Eldon LC: if the bequest is in trust for charity, it is no objection that the charity is not particularly defined, neither is it necessary that the testator should use the word 'charity'. See also *Ommannney v Butcher* (1823) Turn & R 260; *Re Douglas, Obert v Barrow* (1887) 35 ChD 472 at 485, CA, per Cotton LJ; *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 463, CA, per Lindley LJ, and at 469-470 per Rigby LJ; *Re Garrard, Gordon v Craigie* [1907] 1 Ch 382; *Chichester Diocesan Fund and Board of Finance Inc v Simpson* [1944] AC 341 at 348, [1944] 2 All ER 60 at 62, HL, per Viscount Simon LC.

4 In *Application for Registration of Environment Foundation*, Decision of the Charity Commissioners, 24 January 2003, at 3, there is dicta to the effect that the use of the qualifying phrase 'by such means as are charitable' to limit the scope of a purpose that is otherwise not exclusively charitable does not save a trust from failure where this leads to lack of certainty and clarity in the charitable objects; however, this appears to be at least partly based on the erroneous belief that the rule of certainty of objects applies equally to charitable objects as it does to the objects of a private trust. As to schemes see PARA 177 et seq.

5 *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 465, CA, per Lindley LJ, and at 470 per Rigby LJ; and see *A-G v Lawes* (1849) 8 Hare 32 at 42 per Knight Bruce V-C; *Morice v Bishop of Durham* (1805) 10 Ves 522 at 541 per Lord Eldon LC; *James v Allen* (1817) 3 Mer 17 at 19 per Grant MR; *Nash v Morley* (1842) 5 Beav 177 at 183 per Lord Langdale MR; *Re Douglas, Obert v Barrow* (1887) 35 ChD 472 at 482, CA, per Cotton LJ; *Re Davidson, Minty v Bourne* [1909] 1 Ch 567, CA; *Re Warre's Will Trusts, Wort v Salisbury Diocesan Board of Finance* [1953] 2 All ER 99, [1953] 1 WLR 725 (residence for missionaries and for a retreat house); *Re Harpur's Will Trusts, Haller v A-G* [1962] Ch 78, [1961] 3 All ER 588, CA. Cases when part is clearly given to charity should be distinguished: see PARA 94.

6 *Re Jarman's Estate, Leavers v Clayton* (1878) 8 ChD 584 at 587 per Hall V-C.

7 As to the Charitable Trusts (Validation) Act 1954 see PARAS 97-102.

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90. Clear charitable intention necessary.

The question whether any particular gift is or is not charitable is not one for speculative reasoning as to what was the donor's intention, even though his general wishes may be discoverable. No gift is to be deemed charitable unless, in express terms or by necessary implication, the donor has signified a clear intention to devote the property to charitable purposes¹. To ascertain the intention of a testator, a fair interpretation must be put upon the provisions of a will taken together².

Purposes or objects which are not defined or indicated are not presumed to be charitable³, except where a general intention to give to charity is to be gathered from the instrument⁴, or where the nature of the gift permits such a presumption⁵.

A recital of a charitable intention cannot render charitable a trust whose expressed objects are not charitable⁶; but, if the objects of the trust are ambiguous, the recital may be referred to for the purpose of explaining and ascertaining what was the donor's meaning⁷.

Where executors had transferred land to a local authority, which had covenanted to use it as a recreation ground⁸ and for no other purpose, it was held that the land was not held on charitable trusts⁹. It was further held that the Attorney General was not entitled to sue the local authority on its personal covenants¹⁰.

1 *Hunter v A-G* [1899] AC 309 at 315, HL, per Earl of Halsbury LC, and at 319 per Lord Shand. Where no charitable intention is manifest, the court will not execute a trust to distribute a fund among such persons or such purposes as may appear just to the trustees: *Harris v Du Pasquier* (1872) 26 LT 689; *Gibbs v Rumsey* (1813) 2 Ves & B 294; *Fowler v Garlike* (1830) 1 Russ & M 232; and see *Buckle v Bristow* (1864) 13 WR 68.

- 2 *Hunter v A-G* [1899] AC 309 at 320, HL, per Lord Davey.
- 3 *Buckle v Bristow* (1864) 13 WR 68.
- 4 *Mills v Farmer* (1815) 1 Mer 55 at 95 per Lord Eldon LC; *Re Willis, Shaw v Willis* [1921] 1 Ch 44, CA.
- 5 As to the inference of charitable intention see PARA 91. The cases on gifts for the benefit of a particular locality may be regarded as a special example of such a presumption or implication: see PARA 47.
- 6 Cf *Re Sanders' Will Trusts, Public Trustee v McLaren* [1954] Ch 265, [1954] 1 All ER 667.
- 7 *A-G v Jesus College, Oxford* (1861) 29 Beav 163 at 168 per Romilly MR.
- 8 It was common ground that the provision of a recreation ground was a charitable purpose: see PARA 48.
- 9 *Liverpool City Council v A-G* (1992) Times, 1 May.
- 10 *Liverpool City Council v A-G* (1992) Times, 1 May.

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91. Inference of charitable intention.

A gift to or for the benefit of a charitable society, simpliciter, is construed as a gift for its general purposes¹. A gift to a charitable corporation is an absolute gift to it and makes the property given applicable for the objects stated in the corporation's memorandum or charter as part of its general corporate property².

A gift on trust to the holder of an office whose functions are charitable in nature³ is not for that reason a charitable gift if express trusts are attached to the gift by the donor; but where no express trusts are declared, it may sometimes be inferred that the trusts of the gift are the charitable trusts of the trustee's office⁴.

1 See *Re White, White v White* [1893] 2 Ch 41 at 52, CA, per Lindley LJ; *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC; *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n; *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050. If the association is established for charitable purposes, no objection on the ground of perpetuity can arise. As to gifts to unincorporated associations see PARA 62.

2 As to the property of charitable corporations see PARA 235.

3 The same applies to a gift on trust to a charitable society: *A-G v Sibthorp* (1830) 2 Russ & M 107; *A-G v Dean and Canons of Windsor* (1858) 24 Beav 679 at 701-702 per Romilly MR (gifts to dean and canons); *Gloucester Corp'n v Wood* (1843) 3 Hare 131 (on appeal sub nom *Gloucester Corp'n v Osborn* (1847) 1 HL Cas 272) (gift to municipal corporation); and see *Doe d Toone v Copestake* (1805) 6 East 328; *Aston v Wood* (1868) LR 6 Eq 419 (gift to trustees of nonconformist chapel); *Re Freeman, Shilton v Freeman* [1908] 1 Ch 720, CA; *Re Friends' Free School, Clibborn v O'Brien* [1909] 2 Ch 675.

4 Most of the cases on this point arise out of gifts to holders of religious offices. As to gifts to the holders of religious offices see PARA 33.

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92. Alternative, subsidiary or cumulative purposes.

Gifts expressed in the alternative, such as for 'charitable or other purposes'¹, 'charitable or public purposes'², 'charitable or benevolent purposes'³, or in other alternative terms admitting non-charitable objects⁴, are not charitable. Where the word 'or' is used, it must be determined whether it is used exegetically⁵ (meaning 'that is to say'; 'in other words') or disjunctively (that is, separating two alternatives)⁶.

The word 'and' is similarly ambiguous: gifts for 'charitable and benevolent' purposes⁷ and similar gifts⁸ have been held charitable on the ground that the objects indicated must possess both characteristics; but where, upon the true construction of a gift, those words create not cumulative characteristics which each object must possess, but cumulative classes of objects, the trust is not charitable⁹. It may sometimes be the case, however, that the context shows that a word which would normally admit non-charitable objects bears in the particular will a restricted meaning admitting only such objects of the kind which it indicates as are also charitable¹⁰.

1 *Ellis v Selby* (1836) 1 My & Cr 286; *Re Chapman, Hales v A-G* [1922] 2 Ch 479, CA.

2 *Vezey v Jamson* (1822) 1 Sim & St 69; *Re Davis, Thomas v Davis* [1923] 1 Ch 225; *Blair v Duncan* [1902] AC 37, HL; *Langham v Peterson* (1903) 87 LT 744.

Where a gift is 'for the benefit of the schools, and charitable institutions, and poor, and other objects of charity, and any other public objects', the words 'or any other public objects' must be ejusdem generis with the specified ones, and therefore for charitable objects: *Re Bennett, Gibson v A-G* [1920] 1 Ch 305. Cf *A-G of the Cayman Islands v Wahr Hansen* [2001] 1 AC 75, [2000] 3 All ER 642, PC where general statements of benevolent or philanthropic objects were not to be artificially construed so as to be impliedly limited to charitable purposes only when there were clear indications that no such implied limitation had been intended.

3 *Houston v Burns* [1918] AC 337, HL; *Re Jarman's Estate, Leavers v Clayton* (1878) 8 ChD 584; *Re Riland's Estate, Phillips v Robinson* [1881] WN 173; *Chichester Diocesan Fund and Board of Finance Inc v Simpson* [1944] AC 341, [1944] 2 All ER 60, HL; *A-G for New Zealand v Brown* [1917] AC 393, PC.

4 *Shaw's Trustees v Esson's Trustees* (1905) 8 F 52, Ct of Sess (charitable, benevolent or religious objects at discretion of trustees); *Re Davidson, Minty v Bourne* [1909] 1 Ch 567, CA (charitable, religious or other objects in connection with the Roman Catholic faith); *Ellis v IRC* (1949) 31 TC 178, CA; *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451, CA (purposes 'charitable, philanthropic or . . .'); *Down v Worrall* (1833) 1 My & K 561 (pious and charitable purposes or otherwise); *Thompson v Thompson* (1844) 1 Coll 381 at 399 per Knight Bruce V-C; *Re Sidney, Hingeston v Sidney* [1908] 1 Ch 488, CA (charitable or emigration uses).

5 See *Rickerby v Nicholson* [1912] 1 IR 343 (religious or charitable purposes); *Re Salter, Rea v Crozier* [1911] 1 IR 289 (charitable or religious purposes); *Re Sinclair's Trusts* (1884) 13 LR Ir 150 (any charitable or religious purpose); *McPhee's Trustees v McPhee* 1912 SC 75, Ct of Sess; *Re Tomkinson, M'Crea and Bell v A-G of Duchy of Lancaster* (1929) 74 Sol Jo 77 (to such charities or to such religious bodies) in which the gifts were held to be valid.

6 See *Chichester Diocesan Fund and Board of Finance Inc v Simpson* [1944] AC 341, [1944] 2 All ER 60, HL, where the possible interpretations are discussed. In view of the technical meaning of the word 'charitable' in English law, there are obvious difficulties in the way of the exegetical construction, for it might tend to widen 'charitable' rather than to restrict 'benevolent'.

7 *Re Best, Jarvis v Birmingham Corp* [1904] 2 Ch 354; *Caldwell v Caldwell* (1921) 91 LJPC 95, HL; *Jemmit v Verril* (1826) Amb 585n.

8 *A-G v Herrick* (1772) Amb 712 ('charitable and pious uses'); *Re Lloyd, Greame v A-G* (1893) 10 TLR 66 ('religious and benevolent' purposes); *Re Sutton, Stone v A-G* (1885) 28 ChD 464 ('charitable and deserving objects'). See also *Blair v Duncan* [1902] AC 37 at 44, HL, per Lord Davey ('charitable and public purposes'), *Baker v Sutton* (1836) 1 Keen 224 ('religious and charitable institutions and purposes'); *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638 ('furtherance of Conservative principles and religious and mental improvement').

9 *Re Eades, Eades v Eades* [1920] 2 Ch 353 ('religious, charitable and philanthropic objects'); *Williams v Williams, Williams v Kershaw* (1835) 5 Cl & Fin 111n ('benevolent, charitable and religious purposes'); *A-G v Dartmouth Corp* (1883) 48 LT 933 ('charitable, needful and necessary' purposes); and see *A-G v National*

Provincial and Union Bank of England [1924] AC 262, HL ('such patriotic purposes or objects and such charitable institution or institutions or charitable object or objects in the British Empire' as trustees should select); *A-G of the Bahamas v Royal Trust Co* [1986] 3 All ER 423, [1986] 1 WLR 1001, PC (education and welfare); and the Scottish case, *Edgar etc v Cassells* 1922 SC 395, Ct of Sess ('benevolent, charitable and religious institutions in G' construed distributively, though such construction did not render the gift void by Scottish law). The question is whether the gift is for purposes which are both charitable and benevolent or for charitable purposes and for benevolent purposes. The more numerous the qualifications enumerated, the more likely is the latter conclusion: *Re Eades, Eades v Eades*.

10 *Dolan v Macdermot* (1868) 3 Ch App 676; *Re Bennett, Gibson v A-G* [1920] 1 Ch 305; *Re Ludlow, Bence-Jones v A-G* (1923) 93 LJCh 30, CA.

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93. Construction of objects of companies and other bodies.

Similar considerations apply to the objects of companies and other corporate or unincorporated bodies. If a company is formed for a number of objects, some of which, being main objects, permit expenditure on non-charitable activities, or some of which, though subsidiary, are not merely ancillary to the main objects and are not charitable, the company is not formed for charitable purposes only¹. However, if the non-charitable activities do not represent a collateral or independent purpose, but are incidental to, and consequent upon, the way in which the charitable purpose for which alone the body was formed is carried on, the body is charitable². Where such a body has a written constitution, it is not permissible to look at its activities rather than its specified objects to decide what its objects are³. It is, however, permissible to refer to outside evidence in order to decide whether the ascertained objects can be carried out only in a way which is exclusively charitable⁴.

1 *Oxford Group Ltd v IRC* [1949] 2 All ER 537, 31 TC 221, CA; *Ellis v IRC* (1949) 31 TC 178 (on appeal 31 TC 178, CA); *Associated Artists Ltd v IRC* [1956] 2 All ER 583, [1956] 1 WLR 752; *IRC v City of Glasgow Police Athletic Association* [1953] AC 380, [1953] 1 All ER 747, HL.

2 *Institution of Civil Engineers v IRC* [1932] 1 KB 149, CA; *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL; *Royal College of Nursing v St Marylebone Corpn* [1959] 3 All ER 663, [1959] 1 WLR 1077, CA; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769.

3 *Bowman v Secular Society Ltd* [1917] AC 406, HL; *Keren Kayemeth Le Jisroel Ltd v IRC* [1931] 2 KB 465, CA; *Tennant Plays Ltd v IRC* [1948] 1 All ER 506, CA; *Berry v St Marylebone Borough Council* [1958] Ch 406, [1957] 3 All ER 677, CA; *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA; affg [1971] Ch 626, [1971] 1 All ER 436.

4 See *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA.

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94. Intention to devote part to charity.

Even if some of the objects of a trust are prima facie non-charitable¹, or illegal², the gift may be good if there is an overriding intention that some part of the property be applied to charity. If it

can be ascertained what are the proper proportions to be attributed to the several objects, the court will direct an inquiry³, but if from the nature of the gift it appears impracticable to do so the court will divide the fund equally between the different objects⁴, and the gift will only fail as to the proportion appropriated to the non-charitable objects. In simple cases the amount sufficient for the non-charitable purpose may be ascertained by affidavit⁵.

Apportionment between a void part and a valid part is not, however, possible where on its true construction the gift is one entire gift to an entire class with uncertainty in the criteria specified for the selection of beneficiaries from that class⁶.

1 *Hunter v A-G* [1899] AC 309 at 323-324, HL, per Lord Davey; *Wilkinson v Lindgren* (1870) 5 Ch App 570; *Pocock v A-G* (1876) 3 ChD 342, CA; *Re Douglas, Obert v Barrow* (1887) 35 ChD 472, CA; *Re Hurley, Nichols v Pargiter* (1900) 17 TLR 115; *Re Allen, Hargreaves v Taylor* [1905] 2 Ch 400; *Re Hood, Public Trustee v Hood* [1931] 1 Ch 240, CA. See also *A-G v Fletcher* (1835) 5 LJCh 75; *Dolan v Macdermot* (1868) 3 Ch App 676; *Wrexham Corp v Tamplin* (1873) 21 WR 768; *Adnam v Cole* (1843) 6 Beav 353; *Hoare v Osborne* (1866) LR 1 Eq 585; *Re Rigley's Trusts* (1866) 36 LJCh 147; *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187. It is immaterial whether the non-charitable objects are definite or indefinite: *Re Clarke, Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407.

2 *A-G v Hartley* (1793) 4 Bro CC 412; *Carter v Green* (1857) 3 K & J 591; *Salisbury v Denton* (1857) 3 K & J 529, following *Doyley v A-G* (1735) 4 Vin Abr 485, pl 16, at 486 per Lord Cowper; but distinguish *Down v Worrall* (1833) 1 My & K 561, where the trustees had a discretion to apply a fund either for charitable purposes or for an individual.

3 *Adnam v Cole* (1843) 6 Beav 353; *Hoare v Osborne* (1866) LR 1 Eq 585 at 588 per Kindersley V-C; *Re Rigley's Trusts* (1866) 36 LJCh 147; and see *Re Gardom, Le Page v A-G* [1914] 1 Ch 662; revsd on another point [1914] 1 Ch 662 at 674, CA, per Cozens-Hardy MR; and affd sub nom *Le Page v Gardom* (1915) 84 LJCh 749, HL.

4 *Doyley v A-G* (1735) 4 Vin Abr 485, pl 16, at 486 per Lord Cowper; *Crafton v Frith* (1851) 4 De G & Sm 237; *Re Hall's Charity* (1851) 14 Beav 115; *Salisbury v Denton* (1857) 3 K & J 529; *Hoare v Osborne* (1866) LR 1 Eq 585 at 588-589 per Kindersley V-C; *A-G v Marchant* (1866) LR 3 Eq 424; *Hunter v A-G* [1899] AC 309 at 323-324, HL, per Lord Davey; *Re Clarke, Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407; *Re Gavacan, O'Meara v A-G* [1913] 1 IR 276; *Re King, Henderson v Cranmer* [1931] WN 232.

5 *Re Vaughan, Vaughan v Thomas* (1886) 33 ChD 187 at 194 per North J.

6 *Re Wright's Will Trusts* (1982) (1999) 13 TLI 48, CA.

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95. Power to revoke charitable trusts.

If trusts are declared which are charitable, but there is a power to revoke the trusts and declare new ones which need not necessarily be charitable, the existence of the unexercised power does not make the original trusts non-charitable while they last¹.

1 *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA; cf *George Drexler Ofrex Foundation Trustees v IRC* [1966] Ch 675, [1965] 3 All ER 529; *Re Sir Robert Peel's School, Tamworth, ex p Charity Comrs* (1868) 3 Ch App 543. See also *IRC v Yorkshire Agricultural Society* [1928] 1 KB 611 at 633, CA, per Atkin LJ. See also PARA 136 note 17.

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96. Incidental non-charitable benefits.

A gift may be charitable notwithstanding that the attainment of its purposes incidentally produces benefits of a non-charitable character¹ or that non-charitable benefits are conferred for the purpose of promoting the principal charitable purpose².

It is acceptable for charity trustees to be paid out of the charity for their services³. However, if it is proposed that trustees should be paid simply for acting as trustees, the Charity Commission⁴ needs to be satisfied that this does not have the effect of extending the purposes of the institution so that it is incapable of being a charity since it would exist at least in part to benefit the trustee or trustees⁵.

1 See the cases cited in PARA 93 note 2.

2 Cf *Re Coxen, MacCallum v Coxen* [1948] Ch 747, [1948] 2 All ER 492 (provision for an annual dinner and for payment of fees to trustees for their attendance at meetings, held ancillary to management of large fund for the benefit of orthopaedic hospitals). See also *Re Charlesworth, Robinson v Archdeacon of Cleveland* (1910) 101 LT 908 (cited in PARA 32 note 12); *Queen's University of Belfast v A-G for Northern Ireland* [1966] NI 115 (provision for payment of annual sum to each of four outside electors, ancillary to promotion of research by award of elective studentships).

3 See the Charities Act 1993 ss 73A-73C; and PARA 332.

4 As to the Charity Commission see PARAS 538-572.

5 As to the policy of the Charity Commission towards remuneration of trustees under the Charities Act 1993 see *CC11: Trustee Expenses and Payments* (Charity Commission, June 2008) Pt F.

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B. CHARITABLE TRUSTS (VALIDATION) ACT 1954

97. Dispositions affected by the Charitable Trusts (Validation) Act 1954.

Certain dispositions which would have been invalid under the general law as not being for charitable purposes only were validated retrospectively by the Charitable Trusts (Validation) Act 1954¹.

The Act applies to any disposition of property to be held or applied for objects declared by an imperfect trust provision², and to any covenant³ to make such a disposition, where apart from the Act the disposition or covenant is invalid under the law of England and Wales, but would be valid if the objects were exclusively charitable⁴.

A covenant entered into before 30 July 1954⁵ is not, however, enforceable by virtue of the Act unless confirmed by the covenantor after that date, but a disposition made in accordance with such a covenant is to be treated for the purposes of the Act as confirming the covenant and any previous disposition in accordance with it⁶. A disposition in settlement or other disposition creating more than one interest in the same property is treated for the purposes of the Act as a separate disposition in relation to each of the interests created⁷.

1 The Charitable Trusts (Validation) Act 1954 does not affect trust instruments coming into operation on or after 16 December 1952: see s 1(2); and PARA 99. The Act binds the Crown: s 6. The ordinary principles as to certainty of object (see PARA 92) apply to such instruments.

2 As to the meaning of 'imperfect trust provision' see PARA 98.

3 'Covenant' includes any agreement, whether under seal or not; and 'covenantor' is to be construed accordingly: Charitable Trusts (Validation) Act 1954 s 1(4).

4 Charitable Trusts (Validation) Act 1954 s 2(1). Cf *Vernon (William Vernon & Sons Ltd Employees Fund Trustees) v IRC* [1956] 3 All ER 14, [1956] 1 WLR 1169, where the trusts, though not exclusively charitable, were apparently not invalid, so that the Charitable Trusts (Validation) Act 1954 did not affect them. The Act does not apply if the invalidity has already been acted upon: see s 2(2); and PARA 100.

5 Ie the commencement of the Charitable Trusts (Validation) Act 1954.

6 Charitable Trusts (Validation) Act 1954 s 3(6).

7 Charitable Trusts (Validation) Act 1954 s 2(3). It was held by a majority of the Court of Appeal that contributions to an appeal fund, whose purposes were defraying funeral expenses of victims of an accident, caring for disabled victims and then to apply the rest of the funds to such worthy cause or causes in memory of the victims, were dispositions to which the Charitable Trusts (Validation) Act 1954 could apply but were not dispositions creating three separate interests in the money given: *Re Gillingham Bus Disaster Fund, Bowman v Official Solicitor* [1959] Ch 62, [1958] 2 All ER 749, CA.

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98. Imperfect trust provisions.

For the purposes of the Charitable Trusts (Validation) Act 1954, 'imperfect trust provision' means any provision declaring objects for which property is to be held or applied, and so describing those objects that, consistently with the terms of the provision, the property could be used exclusively for charitable purposes, but could nevertheless be used for purposes which are not charitable¹. The trust declared need not be so imperfect as to be invalid².

It has been held³ that a gift for such worthy causes as trustees may think fit is not a disposition to which the Act applies⁴, and that the Act was intended to cure dispositions such that the whole of the money could be devoted to charity by excluding words which are too wide or too vague⁵. In a later case, however, it was held that imperfect trust provisions are not solely those which declare the objects of the trust in such a form as to include by express reference some legally charitable purpose as well as some non-charitable purpose⁶. Thus the Act has been held to validate trusts for welfare purposes amongst employees of companies⁷ and members of a trade union⁸ which would otherwise have failed as being partly for non-charitable purposes, and also because the beneficiaries were not a sufficient section of the public, by limiting the purposes to the relief of poverty among the specified class⁹.

The Act does not apply to a trust which is purely a private discretionary trust with no flavour of charity, but which might be validated if the beneficiaries were required to be poor¹⁰. Similarly it does not apply to a trust with only one expressed object, where that object is not charitable¹¹. A trust for 'such purposes as my trustees may think fit' might not be validated by the Act, notwithstanding that the trustees could properly choose charitable objects¹².

The Act does not apply to a gift to be divided between institutions and associations of a particular type, because such a gift does not declare the objects for which property is to be held or applied¹³.

1 Charitable Trusts (Validation) Act 1954 s 1(1). Where some of the trust property is required to be held for a non-charitable purpose the Act cannot, therefore, apply: *Vernon (William Vernon & Sons Ltd Employees Fund Trustees) v IRC* [1956] 3 All ER 14, [1956] 1 WLR 1169. If no one could object to an exclusively charitable application, the provision in question satisfies the condition: *Ulrich v Treasury Solicitor* [2005] EWHC 67 (Ch), [2005] 1 All ER 1059, [2006] 1 WLR 33.

2 See *Re Harpur's Will Trusts, Haller v A-G* [1962] Ch 78, [1961] 3 All ER 588, CA.

3 Although Buckley J, in *Re Wykes, Riddington v Spencer* [1961] Ch 229 at 239, sub nom *Re Wykes' Will Trusts, Riddington v Spencer* [1961] 1 All ER 470 at 474, treated this as obiter dictum, it appears that it was an alternative ground for decision: see *Re Harpur's Will Trusts, Haller v A-G* [1962] Ch 78 at 95, [1961] 3 All ER 588 at 594, CA, per Harman LJ; *Re Saxone Shoe Co Ltd's Trust Deed, Re Abbott's Will Trusts, Abbott v Pearson* [1962] 2 All ER 904 at 915, [1962] 1 WLR 943 at 957 per Cross J.

4 *Re Gillingham Bus Disaster Fund, Bowman v Official Solicitor* [1958] Ch 300, [1958] 1 All ER 37; affd [1959] Ch 62, [1958] 2 All ER 749, CA.

5 *Re Gillingham Bus Disaster Fund, Bowman v Official Solicitor* [1958] Ch 300 at 306, [1958] 1 All ER 37 at 40 per Harman J.

6 *Re Wykes, Riddington v Spencer* [1961] Ch 229 at 238, sub nom *Re Wykes' Will Trusts, Riddington v Spencer* [1961] 1 All ER 470 at 477 per Buckley J. In *Re Gillingham Bus Disaster Fund, Bowman v Official Solicitor* [1959] Ch 62 at 80, [1958] 1 All ER 749 at 758, CA, Ormerod LJ was of the same view, and cf Lord Evershed MR at 75, 755; see also *Ulrich v Treasury Solicitor* [2005] EWHC 67 (Ch) at [28]-[32], [2005] 1 All ER 1059 at [28]-[32], [2006] 1 WLR 33 at [28]-[32] per Hart J. Some persuasive support for this view may be given by *Re McCullough* [1966] NI 73; *Re Ashton, Siddall v Gordon* [1955] NZLR 192, NZ CA; *Leahy v A-G for New South Wales* [1959] AC 457, [1959] 2 All ER 300, PC (all decided on similar statutory provisions).

7 *Re Wykes, Riddington v Spencer* [1961] Ch 229, sub nom *Re Wykes' Will Trusts, Riddington v Spencer* [1961] 1 All ER 470; *Ulrich v Treasury Solicitor* [2005] EWHC 67 (Ch), [2005] 1 All ER 1059, [2006] 1 WLR 33.

8 *Re Mead's Trust Deed, Briginshaw v National Society of Operative Printers and Assistants* [1961] 2 All ER 836, [1961] 1 WLR 1244.

9 As to the relief of poverty among limited classes such as these see PARA 20.

10 *Re Saxone Shoe Co Ltd's Trust Deed, Re Abbott's Will Trusts, Abbott v Pearson* [1962] 2 All ER 904, [1962] 1 WLR 943. In *Re Wykes, Riddington v Spencer* [1961] Ch 229, sub nom *Re Wykes' Will Trusts, Riddington v Spencer* [1961] 1 All ER 470, the reference to welfare purposes permitted a flavour of charity to be discerned, but Buckley J did not base his decision on that. In *Re McCullough* [1966] NI 73, Lowry J said that no specific indication of a charitable intention was required; but see *Re Ashton, Siddall v Gordon* [1955] NZLR 192, NZ CA.

11 *Buxton v Public Trustee* (1962) 41 TC 235. The object was 'to promote and aid the improvement of international relations and intercourse'.

12 See *Leahy v A-G for New South Wales* [1959] AC 457, [1959] 2 All ER 300, PC, approving *Re Hollole* [1945] VLR 295 (a gift to a trustee to be disposed of by him as he may deem best). See also *Re Wykes, Riddington v Spencer* [1961] Ch 229 at 243, sub nom *Re Wykes' Will Trusts, Riddington v Spencer* [1961] 1 All ER 470 at 476 per Buckley J.

13 *Re Harpur's Will Trusts, Haller v A-G* [1961] Ch 38, [1960] 3 All ER 237; affd [1962] Ch 78, [1961] 3 All ER 588, CA.

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99. Effect of the Charitable Trusts (Validation) Act 1954.

The effect of the Charitable Trusts (Validation) Act 1954 is that any imperfect trust provision¹ contained in an instrument taking effect before 16 December 1952² has, and is deemed to have

had, effect, in relation to any disposition or covenant³ to which the Act applies⁴; (1) as respects the period before 30 July 1954⁵, as if the whole of the declared objects were charitable⁶; and (2) as respects the period thereafter, as if the provision had required the property to be held or applied for the declared objects in so far only as they authorise use for charitable purposes⁷. A document inviting gifts of property to be held or applied for objects declared by the document is treated for these purposes as an instrument taking effect when it is first issued⁸.

Thus the imperfect trust provision itself is not validated, unless it is also the disposition; and there may well be provisions for purposes which would fall within the definition of imperfect trust provision but which would not be invalid as dispositions, and would therefore not be affected⁹, because they do not have effect in relation to any disposition to which the Act applies¹⁰.

1 As to the meaning of 'imperfect trust provision' see PARA 98.

2 I.e. the date of publication of the *Report of the Committee on the Law and Practice relating to Charitable Trusts* Cmd 8710 (1952) (the Nathan Report) and it was made known that the government would introduce legislation enacted by the Charitable Trusts (Validation) Act 1954: see 179 HL Official Report (5th series), 16 December 1952, col 998; and 509 HC Official Report (5th series), 8 December 1952, written answers col 154.

3 As to the meaning of 'covenant' see PARA 97 note 3.

4 Charitable Trusts (Validation) Act 1954 s 1(2). As to dispositions and covenants to which the Charitable Trusts (Validation) Act 1954 applies see PARAS 97, 100.

5 I.e. the date of the commencement of the Charitable Trusts (Validation) Act 1954.

6 Charitable Trusts (Validation) Act 1954 s 1(2)(a).

7 Charitable Trusts (Validation) Act 1954 s 1(2)(b).

8 Charitable Trusts (Validation) Act 1954 s 1(3). In *Re Gillingham Bus Disaster Fund, Bowman v Official Solicitor* [1958] Ch 300, [1958] 1 All ER 37; affd [1959] Ch 62, [1958] 2 All ER 749, CA, a letter published in a newspaper, announcing the establishment of the fund, was held to be a document within this provision.

9 I.e. by the Charitable Trusts (Validation) Act 1954 s 2(1): see PARA 97.

10 See *Harpur's Will Trusts, Haller v A-G* [1962] Ch 78 at 91, [1961] 3 All ER 588 at 592, CA, per Lord Evershed MR.

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100. Savings: dispositions already treated as invalid.

The Charitable Trusts (Validation) Act 1954 does not apply to any disposition if, before 16 December 1952¹, property comprised in, or representing that comprised in, the disposition in question or another disposition made for the objects declared by the same imperfect trust provision, or income arising from any such property, has been paid or conveyed to, or applied for the benefit of, the persons entitled by reason of the invalidity of the disposition in question or the other disposition, as the case may be².

1 I.e. the date of publication of the *Report of the Committee on the Law and Practice relating to Charitable Trusts* Cmd 8710 (1952) (the Nathan Report) and it was made known that the government would introduce

legislation enacted by the Charitable Trusts (Validation) Act 1954: see 179 HL Official Report (5th series), 16 December 1952, col 998; and 509 HC Official Report (5th series), 8 December 1952, written answers col 154.

2 Charitable Trusts (Validation) Act 1954 s 2(2).

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101. Transitional provisions in relation to legal proceedings and tax payments.

The Charitable Trusts (Validation) Act 1954 contained transitional provisions enabling effect to be given to its provisions in legal proceedings begun before the commencement of the Act on 30 July 1954, as well as those begun afterwards¹, and even enabling certain judgments and orders² to be varied in accordance with the provisions of the Act³.

The operation of the Act did not affect retrospectively any liability to tax, nor did it invalidate anything done or any determination given before the commencement of the Act⁴.

1 Charitable Trusts (Validation) Act 1954 s 4(1) (repealed).

2 This did not, however, include orders or judgments made or given before the commencement of the Charitable Trusts (Validation) Act 1954 in proceedings begun before 16 December 1952 (the date of publication of the *Report of the Committee on the Law and Practice relating to Charitable Trusts* (Cmd 8710) (1952) (the Nathan Report) and it was made known that the government would introduce legislation enacted by the Charitable Trusts (Validation) Act 1954: see 179 HL Official Report (5th series), 16 December 1952, col 998; and 509 HC Official Report (5th series), 8 December 1952, written answers col 154): see the Charitable Trusts (Validation) Act 1954 s 4(2) (repealed).

3 See the Charitable Trusts (Validation) Act 1954 s 4(3) (repealed).

4 See the Charitable Trusts (Validation) Act 1954 s 4(4).

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102. Savings: adverse claims.

No proceedings may be begun by any person to enforce his right to any property¹ comprised in, or representing that comprised in a disposition to which the Charitable Trusts (Validation) Act 1954 applies² after 30 July 1955³ or after the expiration of one year beginning with the date on which the right first accrues to him or to some person through whom he claims, whichever is the later, unless before or after its accrual, the right either⁴: (1) has been concealed by the fraud of some person administering the imperfect trust provision⁵ or his agent⁶; or (2) or has been acknowledged by some such person or his agent by means of a written acknowledgment given to the person having the right or his agent and signed by the person making it, or by means of a payment or transfer of property in respect of the right⁷. If the period prescribed for any person to bring proceedings to recover any property expires without his having recovered the property or begun proceedings to do so, his title to the property is extinguished⁸.

Subject to the limitation period set out above, where a disposition to which the Charitable Trusts (Validation) Act 1954 applies was made before, and is not confirmed⁹ after, 30 July 1954, the Act does not prejudice a person's right, by reason of the invalidity of the disposition, to property comprised in, or representing that comprised in, the disposition as against the persons administering the imperfect trust provision or the persons on whose behalf they do so, unless the right accrued to him or some person through whom he claims before 16 December 1946¹⁰. However, the persons administering the imperfect trust provision, and any trustee for them or for the persons on whose behalf they do so, are entitled, as against a person whose right to the property is saved by this last provision, to deal with the property as if his right to the property had not been so saved, unless they have express notice of a claim by him to enforce his right to the property¹¹.

For the purposes of these provisions, a right by reason of the invalidity of a disposition to property comprised in, or representing that comprised in, the disposition is deemed not to accrue to anyone so long as he is under a disability or has a future interest only, or so long as the disposition is subject to another disposition made by the same person, and the whole of the property or the income arising from it is held or applied for the purposes of that disposition¹². The other disposition may be a disposition deemed to be separate by virtue of the Act itself¹³.

1 Ie the right by virtue of the Charitable Trusts (Validation) Act 1954 s 3(1): see the text and notes 9-11.

2 As to dispositions to which the Charitable Trusts (Validation) Act 1954 applies see PARAS 97, 100.

3 Ie after the expiration of one year beginning with 30 July 1954 ie the commencement of the Charitable Trusts (Validation) Act 1954.

4 Charitable Trusts (Validation) Act 1954 s 3(2).

5 As to the meaning of 'imperfect trust provision' see PARA 98.

6 Charitable Trusts (Validation) Act 1954 s 3(2)(a).

7 Charitable Trusts (Validation) Act 1954 s 3(2)(b).

8 Charitable Trusts (Validation) Act 1954 s 3(2). This provision is not to be taken as extending the time for bringing any proceedings beyond the period of limitation prescribed by any other statute: s 3(2). The Limitation Act 1980 s 38(2)-(6) (see **LIMITATION PERIODS** vol 68 (2008) PARAS 1025, 1170) applies for the purposes of the Charitable Trusts (Validation) Act 1954 as it does for the purposes of the Limitation Act 1980 to define the circumstances in which a person is deemed to be under a disability or to claim through another person: Charitable Trusts (Validation) Act 1954 s 3(4) (amended by the Limitation Act 1980 s 40(2), Sch 3 para 4). Rights may accrue to a person for the purposes of this provision notwithstanding that the person or persons to whom they accrue are not ascertained: *Re Harpur's Will Trusts, Haller v A-G* [1961] Ch 38 at 49, [1960] 3 All ER 237 at 243 per Cross J.

9 See PARA 97 text to note 5.

10 Charitable Trusts (Validation) Act 1954 s 3(1). As to claiming through another person see note 8.

11 Charitable Trusts (Validation) Act 1954 s 3(1). There is also provision for the preservation of the right of a person, whose rights are saved by s 3(1), by virtue of his interest in the property to damages or other relief in respect of any dealing with the property, if the person dealing with the property had at the time express notice of a claim by him to enforce his right to the property: see s 3(5).

12 Charitable Trusts (Validation) Act 1954 s 3(3).

13 *Re Chitty's Will Trust, Thomas's Will Trusts, Ransford v Lloyds Bank Ltd* [1970] Ch 254, sub nom *Re Thomas's Will Trust* [1969] 3 All ER 1492. As to what are deemed to be separate dispositions see PARA 97.

POWERS OF APPOINTMENT IN FAVOUR OF CHARITY/103. Test for validity of power of appointment.

C. POWERS OF APPOINTMENT IN FAVOUR OF CHARITY

103. Test for validity of power of appointment.

Powers of appointment, whether mere powers or trust powers, are subject to a different test as to certainty of objects from that applicable to trusts as such¹. The test for powers is whether it can be said of any person or institution whether he or it is or is not an object of the power as defined in the instrument creating the power². Therefore, although the court will not establish a charitable trust where the testator has merely given power to trustees to distribute an indefinite sum in charity³, a power in a will to distribute income to charitable institutions or 'such other organisation or body not registered as a charity but in the opinion of my trustees having charitable objects' is not invalid, though a trust in those terms would be⁴.

A power to appoint to charitable and non-charitable indefinite objects is as invalid as a gift to such objects, and consequently, if a testator makes a gift to charitable and non-charitable objects in such shares and proportions as another person may nominate, the power of appointment is invalid and the subject matter of the gift is divided equally between the objects, the gift failing as to the proportions attributable to the non-charitable objects⁵. However, the inclusion of definite non-charitable institutions together with charity generally as discretionary objects under a trust which does not involve a perpetuity does not render the trust uncertain as to its objects⁶.

1 As to powers of appointment see generally **POWERS; TRUSTS; WILLS**.

2 See *Whishaw v Stephens* [1970] AC 508, sub nom *Re Gulbenkian's Settlement Trusts*, *Whishaw v Stephens* [1968] 3 All ER 785, HL; *McPhail v Doulton* [1971] AC 424, [1970] 2 All ER 228, HL.

3 *Coxe v Basset* (1796) 3 Ves 155 (power given to trustees to continue charities and benefactions or to bestow any other).

4 *Re Wootton's Will Trusts*, *Trotter v Duffin* [1968] 2 All ER 618, [1968] 1 WLR 681.

5 *Re Clarke*, *Bracey v Royal National Lifeboat Institution* [1923] 2 Ch 407.

6 *Re Douglas*, *Obert v Barrow* (1887) 35 ChD 472, CA.

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(3) ASCERTAINMENT OF OBJECTS OF THE TRUST

(i) Construction in general

104. Benignant construction of charitable bequests.

A benignant construction is placed on charitable bequests¹. If a testator declares his intention to give the whole of his estate to charity, but specifically appropriates part only, the general intention in favour of charity prevails, and the proportion not appropriated by him will be

appropriated by the court to charity². Similarly, precatory recommendations in favour of particular charities do not prevent partial application in other ways³.

The court infers from very slight circumstances that a testator means to give the whole of an estate to charitable purposes⁴; but no such inference is made if the testator is aware that the specific charitable payments which he directs do not exhaust the property given to the trustee⁵; nor can a charitable intention be inferred from the mere fact that the trustees are a charitable society and are given a wide discretion⁶. The court's leniency towards charitable gifts is also exemplified by the cases in which gifts apparently to charitable institutions have been construed as gifts for charitable purposes carried on by the institutions⁷.

A gift to a legatee 'for the charitable purposes agreed upon between us' does not imply a general charitable intention, but only a limited charitable intention for the purposes agreed⁸, and evidence is admissible to show what these purposes are, but not to limit the amount of the gift⁹.

1 *Weir v Crum-Brown* [1908] AC 162 at 167, HL, per Lord Loreburn LC; *IRC v McMullen* [1981] AC 1 at 11, [1980] 1 All ER 884 at 890, HL, per Lord Hailsham of St Marylebone LC, with whom three other Law Lords expressly agreed; *Guild v IRC* [1992] 2 AC 310, [1992] 2 All ER 10, HL; but note *Scottish Burial Reform and Cremation Society Ltd v Glasgow City Corpn* [1968] AC 138 at 153, [1967] 3 All ER 215 at 222, HL, per Lord Upjohn. Thus, where a gift is capable of two constructions, one which would make it void and the other which would render it effectual, the latter must be adopted: *Bruce v Deer Presbytery* (1867) LR 1 Sc & Div 96 at 97, HL, per Lord Chelmsford LC; *Houston v Burns* [1918] AC 337 at 341-342, HL, per Lord Finlay LC; and see *Re Bain, Public Trustee v Ross* [1930] 1 Ch 224 at 230, CA, per Lord Hanworth MR. Compare the similar maxim of civil law that where there is an ambiguity, a benignant construction should be given if possible (*semper in dubiis benigniora praeferenda sunt*): Dig, lib 1 tit xvii s 56. See also *Dundee Magistrates v Morris* (1858) 3 Macq 134 at 155, HL, per Lord Chelmsford LC, and at 166 per Lord Cranworth. Cf *A-G of the Cayman Islands v Wahr Hansen* [2001] 1 AC 75, [2000] 3 All ER 642, PC (benignant construction of inter vivos settlement negated by contrary indications).

2 *Beverley Corpn v A-G* (1857) 6 HL Cas 310 at 318 per Lord Cranworth LC, approving the doctrine laid down in *Arnold v A-G* (1698) Show Parl Cas 22, HL, and in *A-G v Johnson* (1753) Amb 190.

3 *Moggridge v Thackwell* (1803) 7 Ves 36; affd (1807) 13 Ves 416, HL.

4 *A-G v Skinners' Co* (1827) 2 Russ 407.

5 *Beverley Corpn v A-G* (1857) 6 HL Cas 310 at 320 per Lord Cranworth LC. See *A-G v Bristol Corpn* (1820) 2 Jac & W 294; *A-G v Drapers' Co* (1840) 2 Beav 508; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369. See also PARA 130.

6 *Re Freeman, Shilton v Freeman* [1908] 1 Ch 720, CA; but see also PARA 89.

7 This is important when there is a question as to whether the stated objects of the gift have failed: see generally PARA 146 et seq.

8 *Re Huxtable, Huxtable v Crawford* [1902] 2 Ch 793 at 796, CA, per Vaughan Williams LJ.

9 *Re Huxtable, Huxtable v Crawford* [1902] 2 Ch 793 at 796, CA, per Vaughan Williams LJ; *Re Blackwell, Blackwell v Blackwell* [1929] AC 318, HL. As to secret trusts see PARA 79; and **TRUSTS** vol 48 (2007 Reissue) PARAS 672-677.

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105. Fund raised by contributions.

When a fund raised from numerous contributories for somewhat indefinite purposes is vested in trustees, the trustees have prima facie implied authority to declare the trusts; and trusts so declared will be binding until set aside at the instance of the Attorney General or of one or more of the donors¹.

The precise ambit of this rule is unclear; it cannot be used to widen the purposes of a gift for a specific charitable purpose so as to defeat the claim of a donor by way of resulting trust on initial failure of the purpose².

1 *A-G v Mathieson, Re Wilkinson and Fell's Contract* [1907] 2 Ch 383 at 394, CA, per Cozens-Hardy MR; *A-G v Clapham* (1855) 4 De GM & G 591 at 626 per Lord Cranworth LC; *Re Lord Mayor of Belfast's Air Raid Distress Fund* [1962] NI 161; *Re Henry Wood National Memorial Trust, Armstrong v Moiseiwitsch* [1967] 1 All ER 238n, [1966] 1 WLR 1601.

2 Cf *Re Henry Wood National Memorial Trust, Armstrong v Moiseiwitsch* [1967] 1 All ER 238n, [1966] 1 WLR 1601.

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(ii) Extrinsic Evidence

106. Contemporaneous evidence.

Evidence is admissible of contemporaneous documents and usage¹, of the circumstances attending the execution of the trust document², of the donor's contemporaneous acts³, of the early application or distribution of the fund⁴, and of the construction placed on doubtful questions which arose in the early administration of the trust⁵. The donee's contemporaneous acts are of little value for the purpose of placing a construction upon any instrument of gift executed by a donor; they only show the intention and the view with which the donee accepted the gift⁶.

1 *Shore v Wilson* (1842) 9 Cl & Fin 355, HL; *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 857 per Lord Brougham; *Aberdeen University v Irvine* (1868) LR 1 Sc & Div 289, HL; *A-G v Anderson* (1888) 57 LJCh 543. As to the presumption of a charitable trust from usage see PARA 111.

2 *A-G v Anderson* (1888) 57 LJCh 543.

3 *A-G v Trinity College, Cambridge* (1856) 24 Beav 383 at 399 per Romilly MR; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369 at 402 per Lord Campbell LC; *A-G v Dartmouth Corp* (1883) 48 LT 933.

4 *Shore v Wilson* (1842) 9 Cl & Fin 355 at 569, HL, per Tindal LJ; *A-G v Brazen Nose College* (1834) 2 Cl & Fin 295, HL.

5 *A-G v Caius College* (1837) 2 Keen 150.

6 *A-G v Trinity College, Cambridge* (1856) 24 Beav 383. It is not so where the trusts are accepted conditionally or subject to certain qualifications, which the court may collect from contemporaneous transactions as evidenced by documents or usage: *A-G v Drapers' Co, Howell's Charity* (1843) 6 Beav 382 at 386 per Lord Langdale MR and cases there cited.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(ii) Extrinsic Evidence/107. Inadmissible evidence.

107. Inadmissible evidence.

Parol evidence is not admissible for the purpose of interpreting a patent ambiguity, as where a blank is left in a trust deed or will¹, though it may be admitted to cure a latent ambiguity, that is to say, to ascertain the meaning the testator affixed to the expressions he used².

Evidence of intention is not admissible to cure an error in description³. Nor is evidence of counsel's opinion given at or prior to the execution of a trust deed admissible on its construction, because it merely amounts to evidence of the intention of the party executing it and to admit it would be a breach of the parol evidence rule⁴.

Where the document of trust is lost, the court will take into consideration existing copies⁵.

1 *Baylis v A-G* (1741) 2 Atk 239. As to ambiguities see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 208; **WILLS** vol 50 (2005 Reissue) PARA 508.

2 *Shore v Wilson* (1842) 9 Cl & Fin 355 at 390, HL, per Lord Lyndhurst ('godly preachers of Christ's holy Gospel'); *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 862 per Lord Brougham ('Protestant dissenters'); *A-G v Clapham* (1855) 4 De GM & G 591 at 627 per Lord Cranworth LC; *A-G v Beverley Corp* (1855) 6 De GM & G 256 at 268 per Turner LJ; *A-G v Dartmouth Corp* (1883) 48 LT 933 ('charitable, needful, and necessary uses'); *Edge v Salisbury* (1749) Amb 70 ('relations'); *Re Kenny, Clode v Andrews* (1907) 97 LT 130; *Re Rees, Jones v Evans* [1920] 2 Ch 59 ('missionary'). See also *Re Kilvert's Trusts* (1871) 7 Ch App 170 at 173 per James LJ; *Re How, How v How* [1930] 1 Ch 66; *Re Moon's Will Trusts, Foale v Gillians* [1948] 1 All ER 300; and see PARA 108.

3 *National Society for the Prevention of Cruelty to Children v Scottish National Society for the Prevention of Cruelty to Children* [1915] AC 207 at 214, HL, per Lord Dunedin; *British Home and Hospital for Incurables v Royal Hospital for Incurables* (1903) 89 LT 495; revsd on other grounds (1904) 90 LT 601, CA.

4 *Rabin v Gerson Berger Association Ltd* [1986] 1 All ER 374, [1986] 1 WLR 526, CA. As to the admission of extrinsic evidence see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 185 et seq.

5 *A-G v Cashel Corp* (1842) 3 Dr & War 294; *A-G v Archbishop of York* (1853) 17 Beav 495; and see *A-G v Boulton* (1794) 2 Ves 380; affd (1796) 3 Ves 220.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(ii) Extrinsic Evidence/108. Extrinsic evidence to explain latent ambiguity.

108. Extrinsic evidence to explain latent ambiguity.

Extrinsic evidence is admissible in the case of latent ambiguity, as where a description in a will applies equally to more than one institution¹, to determine which institution the testator had in his mind². Examples of admissible extrinsic evidence are to show that one of the institutions which claimed the legacy did not exist when the testator was resident in the locality³, or that the testator was interested in⁴, or had declared he would leave a legacy to⁵, or had subscribed to⁶ and referred in his books in a particular way to⁷, a particular charity.

The fact that a dissolved charity satisfied the description given by the testator better than an existing society does not prevent an existing society, which satisfies the description sufficiently, from taking the legacy⁸.

1 The fact that an existing institution is accurately described does not preclude all possibility of there being ambiguity: *National Society for the Prevention of Cruelty to Children v Scottish National Society for the Prevention of Cruelty to Children* [1915] AC 207 at 212, HL, per Lord Loreburn, and at 214 per Lord Dunedin. There is no absolute rule that a person, whether juridical or natural, answering the description in the will must have the gift whatever other considerations arise: *Re Meyers, London Life Association v St George's Hospital* [1951] Ch 534, [1951] 1 All ER 538. As to ambiguities see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 208; **WILLS** vol 50 (2005 Reissue) PARA 508.

2 *Middleton v Clitherow* (1798) 3 Ves 734; *Wilson v Squire* (1842) 1 Y & C Ch Cas 654 at 656 per Wigram V-C; *Re Briscoe's Trusts* (1872) 26 LT 149; *Re Fearn's Will* (1879) 27 WR 392; *Re Raven, Spencer v National Association for the Prevention of Consumption and other Forms of Tuberculosis* [1915] 1 Ch 673 at 681 per Warrington J; *Re King, King v Long* (1918) 53 ILT 60; *Re Satterthwaite's Will Trusts, Midland Bank Executor and Trustee Co Ltd v Royal Veterinary College* [1966] 1 All ER 919, [1966] 1 WLR 227, CA; *Re Nesbitt's Will Trusts, Dr Barnardo's Homes National Incorporated Association v United Newcastle-upon-Tyne Hospitals Board of Governors* [1953] 1 All ER 936, [1953] 1 WLR 595. An inquiry may be directed to decide which the testator intended to benefit: *Middleton v Clitherow*; *Re Dymond, Dymond v A-G* (1906) Times, 2 April. See also the non-charity cases *Charter v Charter* (1874) LR 7 HL 364 at 370-371 per Lord Chelmsford, and at 376 per Lord Hatherley; *Re Beale, Beale v Royal Hospital for Incurables* (1890) 6 TLR 308, CA; and PARA 107.

3 *King's College Hospital v Wheildon* (1854) 18 Beav 30.

4 *Gibson v Coleman* (1868) 18 LT 236.

5 *A-G v Hudson* (1720) 1 P Wms 674.

6 *Bunting v Marriott* (1854) 19 Beav 163; *Re Kilvert's Trusts* (1871) 7 Ch App 170 at 173 per James LJ; *Makeown v Ardagh* (1876) IR 10 Eq 445; *Re Fearn's Will* (1879) 27 WR 392; *Re Bradley, Oldershaw v Governesses' Benevolent Institution* (1887) 3 TLR 668; *Re Howard, Crofton v Lord's Day Observance Society* (1899) 43 Sol Jo 380.

7 *British Home and Hospital for Incurables v Royal Hospital for Incurables* (1904) 90 LT 601, CA.

8 *Coldwell v Holme* (1854) 2 Sm & G 31; *Re Magrath, Histed v Queen's University of Belfast* [1913] 2 Ch 331 (where the existing institution was in effect the defunct institution reconstituted).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(ii) Extrinsic Evidence/109. Trivial error in description.

109. Trivial error in description.

A trivial error in describing the legatee does not invalidate the gift if the testator's intention is clear¹; and where an institution is accurately described, a direction as to the use to be made of the money not applicable to the circumstances is immaterial².

The context of the will is also important, and may show that the description of a charity is exact, and not loose³ or that the testator did not intend to benefit institutions of a particular character⁴.

In short, the course to be adopted to find what legatee answers the description given in a will is the same in the case of a legacy to a charity as in the case of a legacy to an ordinary legatee⁵.

1 *Makeown v Ardagh* (1876) IR 10 Eq 445. Examples are a vicar who is described as a rector (*Hopkinson v Ellis* (1842) 5 Beav 34), or a society which had changed its name but not its objects (*Re Kilvert's Trusts* (1871) 7 Ch App 170). As to the misdescription of property or persons see **WILLS** vol 50 (2005 Reissue) PARA 559 et seq.

2 *Smith v Ruger* (1859) 5 Jur NS 905.

3 *Bradshaw v Thompson* (1843) 2 Y & C Ch Cas 295, where the description was ambiguous, and a general hospital was held entitled to take a legacy in preference to an ophthalmic hospital, because in other gifts in the same will, where the testator intended to benefit institutions for particular complaints, he had said so in express

terms; *Re Alchin's Trusts, ex p Furley, ex p Earl Romney* (1872) LR 14 Eq 230; and see *Wallace v A-G* (1864) 33 Beav 384 at 392 per Romilly MR; *British Home and Hospital for Incurables v Royal Hospital for Incurables* (1904) 90 LT 601, CA.

4 Eg rate-supported institutions: *Lechmere v Curtler* (1855) 24 LJCh 647; *Re Davies' Trusts* (1872) 21 WR 154.

5 *Re Kilvert's Trusts* (1871) 7 Ch App 170 at 174 per Mellish LJ. See **WILLS**.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(ii) Extrinsic Evidence/110. Usage in construction of trust instrument.

110. Usage in construction of trust instrument.

The true construction of ancient instruments of trust may be aided by evidence of long usage and acquiescence¹, and where such instruments may be construed in two ways the court inclines, if possible, to the one supported by long usage² rather than assumes that a breach of trust has been committed³. But usage cannot be held to sanction a clear breach of trust⁴, nor as a rule can evidence of long usage be admitted to vary a trust the terms of which are unambiguous⁵.

1 *A-G v Bristol Corp'n* (1820) 2 Jac & W 294 at 321 per Lord Eldon LC; *A-G v Smythies* (1833) 2 Russ & M 717 at 749 per Lord Brougham LC. As to the interpretation of deeds and the principles of construction see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 164 et seq.

2 See the cases cited in note 1; and *A-G v Rochester Corp'n* (1854) 5 De GM & G 797 at 822 per Turner LJ.

3 *A-G v Sidney Sussex College* (1869) 4 Ch App 722 at 732 per Lord Hatherley LC. See also *Bruce v Deer Presbytery* (1867) LR 1 Sc & Div 96, HL.

4 *A-G v Bristol Corp'n* (1820) 2 Jac & W 294 at 321 per Lord Eldon LC; *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 861 per Lord Brougham; *A-G v Rochester Corp'n* (1854) 5 De GM & G 797 at 822 per Turner LJ; *A-G v St John's Hospital, Bedford* (1865) 2 De GJ & Sm 621; and see *Re Swansea Free Grammar School* [1894] AC 252, PC. In some cases, however, a legal origin for long usage inconsistent with the instrument of trust has been presumed: *Queen's College, Cambridge, Case* (1821) Jac 1; *A-G v Middleton* (1751) 2 Ves Sen 327 at 330 per Lord Hardwicke LC; *Re Parish of St Nicholas Acons* (1889) 60 LT 532; *A-G v Dalton* (1851) 13 Beav 141.

5 *A-G v Calvert* (1857) 23 Beav 248 at 263 per Romilly MR; *A-G v St Cross Hospital* (1853) 17 Beav 435; *A-G v Gould* (1860) 28 Beav 485 at 501 per Romilly MR; *A-G v West* (1858) 27 LJCh 789; *A-G v Ewelme Hospital* (1853) 17 Beav 366.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(iii) Presumption of Charitable Trust from Usage/111. Presumption from usage.

(iii) Presumption of Charitable Trust from Usage

111. Presumption from usage.

In the absence of any document declaring the trusts of a fund, their nature may be determined by usage¹. Where property has been held from time immemorial for the use and repair of what originally was the only church in a parish, the money is not applicable for the purposes of a new church in the same parish². The trustees' accounts showing the application of the income

of a fund for a long period may determine the charitable purposes on which the fund is held³. However, where trustees remain in adverse possession of the trust property after the legal title has reverted to the grantors, they do so on the trusts of the original grant, and cannot themselves declare fresh trusts of the property⁴.

The court will presume whatever may be necessary, even an Act of Parliament⁵, to give long standing usage a legal origin and render it valid⁶; it will be guided by the earliest evidence of usage, and will if possible presume that what was then done and long afterwards continued was rightly done⁷; but when the deed of foundation is produced, and is clear, nothing can be presumed to the contrary of what it established⁸.

1 *A-G v St Cross Hospital* (1853) 17 Beav 435 at 464-465 per Romilly MR; *A-G v Bishop of Worcester* (1851) 9 Hare 328 at 359 per Turner V-C; and see *A-G v Boulton* (1794) 2 Ves 380 (where regard was had to the terms of an entry in an ancient book kept by the trustees for entering their proceedings); *Goodman v Saltash Corpn* (1882) 7 App Cas 633, HL.

2 *Re Church Estate Charity, Wandsworth* (1871) 6 Ch App 296; but see PARA 88.

3 *Re St Bride's, Fleet Street, Church or Parish Estate* (1877) 35 ChD 147n.

4 *Re Ingleton Charity, Croft v A-G* [1956] Ch 585, [1956] 2 All ER 881 (the reverter in that case was automatic, under the School Sites Act 1841).

5 *A-G v Ewelme Hospital* (1853) 17 Beav 366; *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448 at 449 per James V-C.

6 *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448; *Cocksedge v Fanshaw* (1779) 1 Doug KB 119; *Goodman v Saltash Corpn* (1882) 7 App Cas 633 at 640, 644, HL, per Lord Selborne LC (where from long enjoyment by free inhabitants of a borough of a right of fishery a charitable trust in their favour under a lost grant to the corporation was presumed); *Haigh v West* [1893] 2 QB 19 at 26, CA, per Charles J (where enrolment of a lost grant was presumed); and see *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139 at 165 per Parker J; *Harris v Earl of Chesterfield* [1911] AC 623, HL.

7 *A-G v Dalton* (1851) 13 Beav 141 at 142 per Lord Langdale MR.

8 *A-G v St Cross Hospital* (1853) 17 Beav 435; *A-G v Ewelme Hospital* (1853) 17 Beav 366; *A-G v Gould* (1860) 28 Beav 485; and see *Edinburgh Corpn v Lord Advocate* (1879) 4 App Cas 823, HL.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(iii) Presumption of Charitable Trust from Usage/112. Instances of usage.

112. Instances of usage.

A charitable trust may be presumed from such circumstances as the receipt for a long period of a rentcharge by a charity¹, or the letting of certain rights of pasturage by a parish vestry², or the exercise by the free inhabitants of a borough of a right of oyster fishery³.

Various periods of uninterrupted usage have been held sufficient to establish charitable trusts⁴. Statutes now repealed prescribed various periods of usage for the establishment of the trusts of Roman Catholic and dissenting charities, in the absence of written instruments⁵.

1 *A-G v West* (1858) 27 LJCh 789; and see *Stanley v Norwich Corpn* (1887) 3 TLR 506 (where certain rents had been paid to freemen of a city for a long period).

2 *Haigh v West* [1893] 2 QB 19 at 26, CA, per Charles J; and see *A-G v Cashel Corpn* (1842) 3 Dr & War 294.

3 *Goodman v Saltash Corpn* (1882) 7 App Cas 633, HL; and cf *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139 at 165 per Parker J.

4 *A-G v West* (1858) 27 LJCh 789 (30 years); *A-G v Moor* (1855) 20 Beav 119 (100 years); *Re Parker's Charity* (1863) 32 Beav 654 (100 years); *Bunting v Sargent* (1879) 13 ChD 330 at 336 (105 years) per Jessel MR; *Robinson v Smith* (1908) 24 TLR 573 (over 100 years); *Re Parish of St Nicholas Acons* (1889) 60 LT 532 (200 years); *Queen's College, Cambridge, Case* (1821) Jac 1 (250 years); *Re St Alphage, London Wall* (1888) 59 LT 614 (300 years); *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448 (350 years).

5 See the Roman Catholic Charities Act 1860 s 5 and the Nonconformists' Chapels Act 1844 s 2. Both were repealed by the Charities Act 1960 s 39(1), Sch 5 (repealed), but not so as to affect the operation of charities which took effect before the passing of the two Acts: see the Charities Act 1960 s 39(2) (repealed by the Charities Act 2006 Sch 9, but without prejudice to such charities: see the Charities Act 2006 Sch 10 para 22). As to the beneficiaries of religious trusts and the form of worship intended see PARA 117.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(iv) Beneficiaries of Religious Trusts/113. Denomination intended by founder to be followed.

(iv) Beneficiaries of Religious Trusts

113. Denomination intended by founder to be followed.

One principle applicable to all charities without exception is that the founder's intentions are to be carried into effect so far as they are capable of being so, and so far as they are not contrary to law or morality. If, therefore, the founder has directed that only persons conforming to particular religious doctrines shall be recipients of his bounty, his will must be followed¹.

1 *A-G v Calvert* (1857) 23 Beav 248 at 255 per Romilly MR; *Re Malling Abbey Trusts, Beaumont v Dale* (1915) 31 TLR 397, CA (Church of England); *Craigdallie v Aikman* (1820) 2 Bli 529, HL (Scottish seceders); *A-G v Pearson* (1817) 3 Mer 353 at 410 per Lord Eldon LC; *Milligan v Mitchell* (1837) 3 My & Cr 72 (Scottish dissenters).

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114. Presumptions as to particular denominations.

A trust for the purpose of building a church or otherwise for maintaining and propagating the worship of God, containing no more precise expression of intention, is construed as a trust for the advancement of the established religion of the country¹. Where the instrument of foundation was made before the Reformation, it was construed as though made after that event². The expression 'Presbyterian' does not denote any particular doctrine or mode of worship³. In the absence of express direction, there is a presumption, in the case of eleemosynary⁴ and educational charities⁵, against the founder's intention being that the recipients must be persons holding a particular form of religious belief. Thus, in eleemosynary charities the founder's religious opinions and tenets are wholly to be disregarded. The presumption is that he intended to include persons of all persuasions, and the burden of proof lies on those who seek to exclude any⁶.

In gifts to educational charities the founder's opinions are only of value where some directions may have been given by him relative to the religious instruction to be given to the pupils to be

taught, and then only for the purpose of explaining and elucidating any obscurity or ambiguity which may be found in such direction⁷.

1 *A-G v Pearson* (1817) 3 Mer 353 at 409 per Lord Eldon LC; *A-G v Calvert* (1857) 23 Beav 248 at 258 per Romilly MR.

2 *A-G v Calvert* (1857) 23 Beav 248 at 260 per Romilly MR; and see *Glasgow College v A-G* (1848) 1 HL Cas 800.

3 *A-G v Bunce* (1868) LR 6 Eq 563 at 574 per Malins V-C. With regard to Presbyterian trusts see *Westwood v McKie* (1869) 21 LT 165; *General Assembly of the Free Church of Scotland v Lord Overtoun*, *Macalister v Young* [1904] AC 515, HL.

4 As to eleemosynary corporations see PARA 224.

5 As to educational charities see **EDUCATION** vol 15(2) (2006 Reissue) PARA 700.

6 *A-G v Calvert* (1857) 23 Beav 248 at 259 per Romilly MR; *A-G v St John's Hospital, Bath* (1876) 2 ChD 554.

7 *A-G v Calvert* (1857) 23 Beav 248 at 258-259 per Romilly MR; *A-G v Clifton* (1863) 32 Beav 596; and see *Re St Leonard, Shoreditch, Parochial Schools* (1884) 10 App Cas 304, PC.

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115. Presumptions in case of gift expressly for religious purpose.

In the case of a charity for the support of a religious establishment generally, or the purpose of religious instruction, two presumptions arise: first, that the founder intended to support an establishment belonging to some particular form of religion, and that he intended some particular doctrine of religion to be taught; and secondly, that this establishment and doctrine were those which he himself supported and professed; the court will look carefully at his course of life and conduct and spell out expressions, not merely in the instrument of foundation, but in his will and works, to ascertain what were the doctrines and opinions entertained and professed by him¹.

1 *A-G v Calvert* (1857) 23 Beav 248 at 256 per Romilly MR; *Shore v Wilson* (1842) 9 Cl & Fin 355, HL; *General Assembly of the Free Church of Scotland v Lord Overtoun*, *Macalister v Young* [1904] AC 515 at 613, HL, per Earl of Halsbury LC.

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116. Ascertainment of founder's intention.

The founder's intention is a question of fact¹, not always easily ascertained². Where there is no expressed intention³, or where the language is ambiguous⁴, and in those cases only, the objects and mode of executing the trust may be ascertained from a consideration of extrinsic circumstances. Thus, where vague expressions, such as 'Protestant dissenters', are used, extrinsic evidence is admissible to show what denominations are intended to be included⁵.

Nevertheless, evidence is not admissible to contradict an express trust⁶, or to sanction a breach of trust⁷, or to show the sense in which words were used by particular individuals⁸, other than the authors of the trusts in question⁹.

Reference also may be made to contemporaneous statutes to see in what sense the words were used in the age in which the deeds were executed¹⁰, to contemporaneous deeds relating to the same chapel¹¹, or to a contemporaneous declaration of trust¹², or to the ecclesiastical history of the period¹³; and where the trust is for the benefit of an existing congregation of dissenters, the character of the congregation may be made the subject of inquiry¹⁴.

The founder's meaning may be explained by evidence as to the character of the congregation for whose benefit the gift was made¹⁵.

1 *Shore v Wilson* (1842) 9 Cl & Fin 355, HL.

2 *Foley v Wontner* (1820) 2 Jac & W 245.

3 *A-G v Murdoch* (1849) 7 Hare 445; affd (1852) 1 De GM & G 86.

4 *A-G v Calvert* (1857) 23 Beav 248 at 263 per Romilly MR; *A-G v Gould* (1860) 28 Beav 485.

5 *Shore v Wilson* (1842) 9 Cl & Fin 355 at 390, HL, per Lord Lyndhurst. In some cases Unitarians were held not entitled to participate; but it has been said that upon most occasions they would now be considered to be Protestant dissenters (*Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 863 per Lord Campbell); and see *Re Hutchinson's Trusts* [1914] 1 IR 271. As to presumption arising from usage see also PARAS 111-112.

6 *A-G v Clapham* (1855) 4 De GM & G 591.

7 *Drummond v A-G for Ireland* (1849) 2 HL Cas 837.

8 *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 863 per Lord Campbell; *Re How, How v How* [1930] 1 Ch 66.

9 *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 858 per Lord Brougham; and see PARA 107.

10 *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 863 per Lord Campbell; *Shore v Wilson* (1842) 9 Cl & Fin 355 at 413, HL, per Campbell A-G. See also PARA 107.

11 *A-G v Anderson* (1888) 57 LJCh 543.

12 *A-G v Clapham* (1855) 4 De GM & G 591 at 626 per Lord Cranworth LC.

13 *A-G v Bunce* (1868) LR 6 Eq 563 at 571-572 per Malins V-C.

14 *A-G v Murdoch* (1849) 7 Hare 445; affd (1852) 1 De GM & G 86; and see *Dill v Watson* (1836) 2 Jo Ex Ir 48. Many denominations of dissenters, in order to secure uniformity in the trusts of their chapels, schools and other property, use model deeds which are in fact carefully prepared deeds relating to particular chapels, schools, etc, by reference to which the trusts of other chapels, etc can be declared. Denominations which use such model deeds include the Methodist Church, the Baptists, the United Reformed Church, the Fellowship of Independent Evangelical Churches, Unitarians, the Calvinistic Methodist or Presbyterian Church of Wales.

15 *A-G v Molland* (1832) 1 You 562, where teaching 'the Gospel of Christ under the name of orthodoxy' was so explained.

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117. Form of worship intended.

It is not essential for the trusts of religious charities to be in writing in order that they may be enforced by the court¹. The court may ascertain what form of religious worship was intended from the established usage of the congregation².

It was provided by statute that, in the case of Nonconformist chapels where there was no written instrument specifying particular forms of worship or opinions, 25 years' usage was to be taken as conclusive evidence of what might be taught or observed there³; and that in the case of Roman Catholic charities, if the trusts of the charity were not ascertained by means of any written document, 20 years' consistent usage was deemed conclusive evidence of the trusts on which the property was settled⁴. These provisions have now been repealed, but without prejudice to their operation as applied to charities taking effect before the repeals⁵.

1 See also PARA 74.

2 *A-G v Pearson* (1817) 3 Mer 353 at 400 per Lord Eldon LC; *A-G v Murdoch* (1849) 7 Hare 445; affd (1852) 1 De GM & G 86; *Drummond v A-G for Ireland* (1849) 2 HL Cas 837. For a form of order directing an inquiry as to usage see *A-G v Pearson* at 420 per Lord Eldon LC. As to usage being presumptive evidence of trusts see PARA 111.

3 Nonconformists' Chapels Act 1844 s 2 (repealed).

4 Roman Catholic Charities Act 1860 s 5 (repealed).

5 See the Charities Act 1960 s 39(1), (2), Sch 5 (s 39(1), Sch 5 repealed).

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118. Gifts for benefit of a church.

A fund given for the 'reparation' of a church may in a proper case be applied in the erection of new buildings¹ and paying the salaries of persons who look after the fabric or ornaments of the building².

The income of a fund directed to be employed by the churchwardens of a parish 'about the parish church' is applicable to general expenditure about the church as a whole, including repairs to the chancel, although the churchwardens are not concerned with chancel repairs, which formerly fell on the rector as owner of the great tithes³.

The endowment of a church means that the income only of the fund is to be applied for the benefit of the incumbent⁴.

A gift to a parish church may be construed to be a gift to the parson and parishioners and their successors for ever⁵, for their benefit, intended to be devoted to purposes in the parish connected with the services of the church, such purposes now being activities properly directed by the parochial church council⁶. Gifts to a vicar⁷ and a dissenting minister⁸ may also be gifts for the benefit of the office, and not merely personal legacies to the holder of the office at the date of the gift.

A charitable bequest to a bishop 'to be applied by him for such general or special purposes in connection with' a named cathedral church 'as he in his absolute and uncontrolled discretion may think fit' may be applied in paying the stipend of an honorary canon having a stall in the cathedral, even though his main work lies outside the parish in which the cathedral is situated, or of a canon missionary with duties inside the cathedral, even though he is liable to be

employed in the diocese outside the parish, but not of a canon missionary with general diocesan duties and having only an honorary stall in the cathedral⁹.

- 1 *Re Palatine Estate Charity* (1888) 39 ChD 54. See *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1; *Re Booth's Charities* (1866) 14 WR 761.
- 2 *Re Palatine Estate Charity* (1888) 39 ChD 54 (this includes the vergers or organ tuner, but not the organist).
- 3 *A-G v Parr* [1920] 1 Ch 339. Tithes have been abolished: see the Tithe Act 1936; and **ECCELSIASTICAL LAW** vol 14 PARA 1209 et seq. As to chancel repairs see **ECCELSIASTICAL LAW** vol 14 PARA 1100 et seq.
- 4 *Re Robinson, Wright v Tugwell* [1892] 1 Ch 95 at 100 per North J; on appeal [1897] 1 Ch 85, CA.
- 5 *Cheeseman v Partridge* (1739) 1 Atk 436. As to gifts to holders of religious offices see PARA 33.
- 6 *Re Gare, Filmer v Carter* [1952] Ch 80, [1951] 2 All ER 863.
- 7 *Re Parker's Charity* (1863) 32 Beav 654. See also *Re Garrard, Gordon v Craigie* [1907] 1 Ch 382.
- 8 *A-G v Cock* (1751) 2 Ves Sen 273; and see *Cheeseman v Partridge* (1739) 1 Atk 436 (schoolmaster).
- 9 *Re Whitehead* (1908) Times, 14 October.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(v) Gifts for Institutions, Parishioners or Parishes/119. Gifts for institutions.

(v) Gifts for Institutions, Parishioners or Parishes

119. Gifts for institutions.

Where gifts are made to an existing charitable institution or to its governors or treasurer, generally¹ or for promoting certain definite objects which are in fact the objects of that institution², the gifts are applicable by the trustees, governors, or other officials for the general purposes of the institution.

A gift to an existing institution for a purpose which is in fact within the objects of the institution is prima facie a gift for the performance of that purpose by the institution in the course of its own activities. Thus, a gift of a fund to a city company to be employed in apprenticing young men should prima facie be applicable for apprenticing them in the craft in which the corporate body was engaged³; and where there is a gift to a college for the purpose of educating the descendants of a testator⁴, education at that particular college, and not elsewhere, is presumed to be intended⁵.

- 1 *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC (a gift to a college); *Re White, White v White* [1893] 2 Ch 41 at 52, CA, per Lindley LJ.
- 2 *Incorporated Society in Dublin v Richards* (1841) 1 Dr & War 258 at 294, 332 per Lord Sugden LC.
- 3 *A-G v Sidney Sussex College* (1869) 4 Ch App 722 at 730 per Lord Hatherley LC.
- 4 A gift for the education of descendants of named persons would now be regarded as a family trust and not charitable: *Re Compton, Powell v Compton* [1945] Ch 123 at 136, [1945] 1 All ER 198 at 205, CA, per Lord Greene MR.
- 5 *A-G v Sidney Sussex College* (1869) 4 Ch App 722 at 731 per Lord Hatherley LC.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(v) Gifts for Institutions, Parishioners or Parishes/120. Gifts for parishioners or for the poor.

120. Gifts for parishioners or for the poor.

Where children of parishioners of a certain parish are alone eligible as objects of a charity, the word 'parishioner' has hitherto been taken in its ordinary sense of a person occupying premises liable to be rated in the parish¹.

A charity for the poor of a parish was not to be applied in such a way as to relieve those who had otherwise to support the poor by means of the poor rate²; but this principle did not apply to a gift which was intended in aid of poor rate³.

¹ *Etherington v Wilson* (1875) 1 ChD 160, CA. See also *A-G v Parker* (1747) 3 Atk 576; *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93; *A-G v Rutter, Sellon v Nicholls* (1768) 2 Russ 101n ('inhabitants and parishioners'); *Carter v Cropley* (1857) 8 De GM & G 680 at 687 per Bruce LJ; *Kensit v Rector of St Ethelburga, Bishopsgate Within* [1900] P 80. For a detailed analysis of the cases relating to 'parishioners' or 'inhabitants' see Tudor on Charities (7th Edn, 1984) p 210 et seq.

The effect of the Local Government Finance Act 1988, which abolished domestic rates and replaced them by the community charge, which was then subsequently replaced by the council tax in 1993 (see the Local Government Finance Act 1992; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2) has not been considered by the courts.

² This principle was established in cases deciding that persons receiving poor law relief were not proper objects of such a charity: see *A-G v Leage* [1881] WN 167; *A-G v Bovill* (1840) 1 Ph 762; *Deptford Churchwardens v Sketchley* (1847) 8 QB 394 at 405 per Lord Denman CJ; *A-G v Wilkinson* (1839) 1 Beav 370; *A-G v Exeter Corp* (1827) 3 Russ 395. See also *A-G v Price* (1744) 3 Atk 108; *A-G v Gutch* (1830) cited in *Shelford on Mortmain* (1836) 628; *A-G v Clarke* (1762) Amb 422; *Bishop of Hereford v Adams* (1802) 7 Ves 324; *A-G v Rochester Corp* (1854) 5 De GM & G 797; *Re Sekforde's Charity* (1861) 4 LT 321. The poor law has been replaced by the modern social security system: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARAS 2-6.

³ *A-G v Blizard* (1855) 21 Beav 233; *Re Richmond Parish Charity Lands, Richmond Corp v Morell* (1965) 11 RRC 89; revsd on appeal on some points (1965) 11 RRC 283, CA (the same charity as in *A-G v Blizard*, after the abolition of the poor rate). See also PARA 48.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(3) ASCERTAINMENT OF OBJECTS OF THE TRUST/(vi) Uncertainty of Objects/121. Uncertainty of objects in general.

(vi) Uncertainty of Objects

121. Uncertainty of objects in general.

Where a clear charitable intention is expressed, a gift which is otherwise valid is never allowed to fail on account of the uncertainty of the object, but the particular mode of application will be directed by the Crown in some cases, and by the court in others¹.

Effect will therefore be given to bequests for charitable purposes generally², or for a particular charitable purpose generally, such as the relief of poverty³, or for the advancement of education⁴ or religion⁵, and to charitable gifts where the testator has indicated the class of objects to be benefited, such as the poor of a particular place⁶ or the clergy of a particular

sect⁷, without prescribing the particular way in which his intention is to be carried into effect. In all of these cases the law supplies the mode of effectuating the intention⁸.

1 *Moggridge v Thackwell* (1803) 7 Ves 36, where Lord Eldon considered the earlier cases; *Morice v Bishop of Durham* (1804) 9 Ves 399 at 404 per Grant MR (on appeal (1805) 10 Ves 522); *Mills v Farmer* (1815) 1 Mer 55; *Re White, White v White* [1893] 2 Ch 41 at 53, CA, per Lindley LJ; *Re Forester, Jervis v Forester* (1897) 13 TLR 555; *Re Pyne, Lilley v A-G* [1903] 1 Ch 83; *Re Bennett, Sucker v A-G* [1960] Ch 18, [1959] 3 All ER 295. Where the court has jurisdiction, schemes may also be directed by the Charity Commission (see the Charities Act 1993 s 16(1)(a); and PARA 187) or the Tribunal (see the Charities Act 1993 s 2A, Sch 1C, Table; and PARA 197). As to the Charity Commission see PARAS 538-572; as to the Tribunal see PARA 573 et seq.

2 *A-G v Herrick* (1772) Amb 712; *Morice v Bishop of Durham* (1805) 10 Ves 522 at 54 Lord Eldon LC; *Miller v Rowan* (1837) 5 Cl & Fin 99 at 109, HL, per Lord Brougham. As to where no trust is created and property is given to charity generally see PARA 509.

3 *A-G v Rance* (1728) cited in Amb 422. As to the relief of poverty see PARA 14 et seq.

4 *Whicker v Hume* (1858) 7 HL Cas 124. As to the advancement of education see PARA 22 et seq.

5 *Re White, White v White* [1893] 2 Ch 41 at 52, CA, per Lindley LJ. As to the advancement of religion see PARA 28 et seq.

6 *A-G v Wilkinson* (1839) 1 Beav 370.

7 *A-G v Hickman* (1732) 2 Eq Cas Abr 193 pl 14; *A-G v Gladstone* (1842) 13 Sim 7.

8 *Mills v Farmer* (1815) 1 Mer 55 at 95 per Lord Eldon LC. See also PARAS 509, 530.

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122. Description by locality.

In case of ambiguity, where the testator describes the institution he intends to benefit as being in a particular locality, *prima facie*¹ the legacy will go to an institution situated in the locality named, though the name used is more like that of an institution in another locality². On the other hand, a legacy to the hospitals of London was not limited to hospitals within the City of London³; while a gift to 'all and every the hospitals', without further description, was confined to hospitals in the locality where the testatrix resided⁴.

1 For cases in which other indications in the will contradictory to the description by locality have been followed see *Re Morgan, Marriott v Society for Abolition of Vivisection* (1909) 25 TLR 303; *British Home and Hospital for Incurables v Royal Hospital for Incurables* (1904) 90 LT 601, CA.

2 *Wilson v Squire* (1842) 1 Y & C Ch Cas 654; *Re Lycett, Riley v King's College Hospital* (1897) 13 TLR 373 (where the 'King's Cross Hospital' was construed to mean the Great Northern Hospital, King's Cross, in preference to the King's Cross Hospital at Dundee); *Bradshaw v Thompson* (1843) 2 Y & C Ch Cas 295 (where the 'Westminster Hospital, Charing Cross' was construed to mean the Charing Cross Hospital rather than the Westminster Hospital or the Royal Westminster Ophthalmic Hospital). See also *General Lying-in Hospital v Knight* (1851) 21 LJCh 537; *Re Kilvert's Trusts* (1871) 7 Ch App 170 at 173 per James LJ; *Re Clergy Society* (1856) 2 K & J 615; *Buxton v Blakiston* (1886) 2 TLR 293; *Re Glubb, Barnfield v Rogers* (1897) 14 TLR 66.

3 *Wallace v A-G* (1864) 33 Beav 384; and see *Ditcham v Chivis* (1828) 4 Bing 706; *Beckford v Crutwell* (1832) 5 C & P 242.

4 *Masters v Masters* (1718) 1 P Wms 421 at 425.

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(vii) Delegation of Ascertainment of Objects

123. Power to determine object.

Power to determine the particular object to be benefited may be delegated¹, so long as charitable and no other objects may benefit². Thus, a direction to trustees to divide a fund at their discretion among such charitable institutions or objects as they think expedient is valid³; so, too, a bequest to such charitable objects of a definite class as the trustees select is valid and not void for uncertainty⁴. Whether the discretion extends to the whole gift or only to part of it is a question of construction⁵, as is the question whether the trustees may appoint capital or only income to the selected objects⁶.

The court will modify an apportionment which is not in accordance with the testator's wishes⁷. Where, however, trustees are given the widest possible discretion within certain limits in the choice of objects, they need not exercise their discretion in accordance with the known views of the testator⁸.

Where the power to determine the particular object is delegated to a person who fails to exercise the power, the gift to charity does not fail on that account. Thus, a gift is not invalidated by a trustee neglecting to appoint⁹ or an executor renouncing¹⁰, or by the appointment of an executor being revoked¹¹, or by the death in the testator's lifetime of any person entrusted with the nomination of the particular object¹², or by the name of the intended nominator being left blank¹³, or by the trustees declining to act¹⁴ or dying without exercising the discretion¹⁵. In such cases the court will distribute the money after an inquiry¹⁶.

A direction to trustees to apply residue for such charitable institutions or such other charitable objects as they might in their absolute discretion select does not enable them to set up and distribute the residue to a charitable foundation having a permanent existence¹⁷.

¹ *A-G v National Provincial and Union Bank of England* [1924] AC 262 at 264, HL, per Lord Cave LC. As to who may exercise discretionary power see PARA 379.

² *Chichester Diocesan Fund and Board of Finance Inc v Simpson* [1944] AC 341 at 371, [1944] 2 All ER 60 at 74, HL, per Lord Simonds; see also at 348, 62 per Viscount Simon LC, at 350, 63 per Lord Macmillan, and at 356, 66 per Lord Wright.

³ *Waldo v Caley* (1809) 16 Ves 206; *Horde v Earl of Suffolk* (1833) 2 My & K 59; *Re Lea, Lea v Cooke* (1887) 34 ChD 528; *Cleland's Trustees v Cleland* 1907 SC 591, Ct of Sess; *Dick's Trustees v Dick* 1907 SC 953, Ct of Sess; affd sub nom *Dick v Audsley* [1908] AC 347, HL. See also the cases on cumulative purposes cited in PARA 92, and cf the cases on alternative purposes there cited, where the bequests were held void for uncertainty.

⁴ See *Re Garrard, Gordon v Craigie* [1907] 1 Ch 382; *Re Bennett, Gibson v A-G* [1920] 1 Ch 305; *Re Bain, Public Trustee v Ross* [1930] 1 Ch 224, CA; *Re Norman, Andrew v Vine* [1947] Ch 349, [1947] 1 All ER 400; *Re Flinn, Public Trustee v Flinn* [1948] Ch 241, [1948] 1 All ER 541; *Re Eastes, Pain v Paxon* [1948] Ch 257, [1948] 1 All ER 536.

⁵ See eg *Re Hall's Charity* (1851) 14 Beav 115.

⁶ *Re Beesty's Will Trusts, Farrar v Royal Alfred Merchant Seamen's Society* [1966] Ch 223, [1964] 3 All ER 82.

⁷ *A-G v Buller* (1822) Jac 407. See also *A-G v Rochester Corp'n* (1676) Cas temp Finch 193; *A-G v Rochester Corp'n* (1833) 6 Sim 273.

⁸ *Re Squire's Trusts, Chester and Flower v Oxford and Cambridge Universities and A-G* (1901) 17 TLR 724.

- 9 *A-G v Boulton* (1796) 3 Ves 220; *Re Douglas, Obert v Barrow* (1887) 35 ChD 472 at 485, CA, per Cotton LJ.
- 10 *A-G v Fletcher* (1835) 5 LJCh 75. A power for executors to nominate is not exercisable by trustees subsequently appointed: *Hibbard v Lamb* (1756) Amb 309.
- 11 *White v White* (1778) 1 Bro CC 12; *Moggridge v Thackwell* (1803) 7 Ves 36 at 78 per Lord Eldon LC.
- 12 *Moggridge v Thackwell* (1803) 7 Ves 36 (affd (1807) 13 Ves 416, HL); *Re Willis, Shaw v Willis* [1921] 1 Ch 44, CA.
- 13 *Baylis v A-G* (1741) 2 Atk 239.
- 14 *Doyley v A-G* (1735) 2 Eq Cas Abr 194.
- 15 *A-G v Bucknall* (1742) 2 Atk 328.
- 16 *Doyley v A-G* (1735) 2 Eq Cas Abr 194.
- 17 *Re Muller's Estate* (22 June 1990, unreported): *Report of the Charity Commissioners for England and Wales for 1990* (HC Paper (1990-91) no 362) App D(a).

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124. Founder's right to nominate beneficiaries.

The right of nominating the beneficiaries of a charity belongs naturally to the founder and his heirs or nominees¹, until forfeited by neglect or improper use².

This right of nomination, while capable of alienation³, does not necessarily pass upon the alienation of land to which it is attached. Thus, the owner of a manor to which a right of patronage is attached can alienate the manor without parting with the right of patronage⁴.

- 1 *A-G v Leigh* (1721) 3 P Wms 145n (inmates of almshouses); *Green v Rutherford* (1750) 1 Ves Sen 462; *Philips v Bury* (1694) 2 Term Rep 346 at 352-353, HL, per Holt CJ. It is not clear what effect the abolition of descent to the heir has upon rights of patronage. As to the old rules of descent see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 584.
- 2 *A-G v Leigh* (1721) 3 P Wms 145n; Tudor on Charities (7th Edn, 1984) p 405.
- 3 *A-G v Brentwood School* (1832) 3 B & Ad 59; *A-G v Boucherett* (1858) 25 Beav 116 (cases of school patronage); *Re Church Patronage Trust, Laurie v A-G* [1904] 2 Ch 643, CA (advowson).
- 4 *A-G v Ewelme Hospital* (1853) 17 Beav 366. Where the owner of lands granted out of them a perpetual rentcharge in support of a charity, and subsequently conveyed away the fee simple, it was held that his heir was not thereby deprived of the right of nominating the objects of the charity: *A-G v Rigby* (1732) 3 P Wms 145. Descent to the heir has been abolished: see note 1.

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125. Right vested in trustees or others.

Trustees to whom a testator gives the direction and management of a school provided by him are entitled to nominate and appoint the scholars¹. The transfer to local authorities of the powers of vestries² has not affected any right of electing almsmen vested by deed in the minister, churchwardens, overseers and ratepayers of a parish³ or any right vested in trustees of electing the minister of a parish⁴.

1 *A-G v Dean and Canons of Christ Church* (1822) Jac 474 at 486 per Plumer MR (revsd on another point (1826) 2 Russ 321); and see *A-G v Scott* (1750) 1 Ves Sen 413.

2 See **LOCAL GOVERNMENT** vol 69 (2009) PARA 4.

3 *A-G v Drapers' Co* (1858) 4 Drew 299. Overseers were abolished by the Rating and Valuation Act 1925 s 62 (repealed) and their powers transferred to the rating authorities, or to such other local authorities or persons as were mentioned in the Overseers Order 1927, SR & O 1927/55 (lapsed). Domestic rates were abolished by the Local Government Finance Act 1988 and replaced by the community charge, itself replaced by the council tax in 1993: see the Local Government Finance Act 1992; **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2; and **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 447 et seq.

4 *Carter v Crompton* (1857) 8 De GM & G 680. See also *Shaw v Thompson* (1876) 3 ChD 233; and cf *Re Hayle's Estate* (1862) 31 LJCh 612. As to transfer to the parochial church council see **ECCELSIASTICAL LAW** vol 14 PARA 575.

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126. Church Commissioners' powers.

In orders made by it under the Bishops Trusts Substitution Act 1858¹, the Charity Commission² is not entitled to make any order in relation to any advowson or right of patronage or presentation, part of the possessions of a see, which might be exchanged or otherwise disposed of by scheme of the Church Commissioners; nor may any orders relating to any ecclesiastical patronage be made under that Act without the consent of the Church Commissioners³.

1 See PARA 267.

2 As to the Charity Commission see PARAS 538-572.

3 See the Bishops Trusts Substitution Act 1858 s 2; and PARA 267. As to the Church Commissioners see **ECCELSIASTICAL LAW** vol 14 PARAS 361-383.

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127. Beneficiaries' qualifications.

Where by the instrument establishing a charity the beneficiaries are required to possess certain qualifications, as, for example, to be parishioners of a certain parish¹, or to have been pupils for a number of years at a certain school², or where, other things being equal, preference is to be given to freemen of a certain town³, the conditions imposed by the instrument must be complied with. However, the parties exercising the right of nomination need not take into

consideration the motives with which the proposed beneficiaries secured the necessary qualifications⁴; and where compliance with certain religious forms is annexed as a condition to a charitable gift no further religious test can properly be required⁵.

1 *Etherington v Wilson* (1875) 1 ChD 160, CA. As to the effect of a union of benefices upon charitable trusts relating to the united parishes see the Pastoral Measure 1983 Sch 3 para 11; and PARA 266.

2 *Re Storie's University Gift* (1860) 2 De GF & J 529.

3 *Re Nettle's Charity* (1872) LR 14 Eq 434 (election to scholarship).

4 *Etherington v Wilson* (1875) 1 ChD 160, CA, where the proposed beneficiary had become a parishioner temporarily to obtain the required qualification.

5 *A-G v Calvert* (1857) 23 Beav 248.

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128. Nomination by subscribers' votes.

Subscribers to a charity who are entitled to votes in proportion to the amount of their subscriptions may vote for any candidate they please. There is nothing illegal in a bargain between two subscribers by which the candidate of one is to be given the votes of both at an election in consideration of the candidate of the other having similar treatment at another election, and such a contract is enforceable at law¹.

1 *Bolton v Madden* (1873) LR 9 QB 55.

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129. Improper nomination.

A nomination which fails to comply with the directions of the instrument establishing the charity may be set aside¹, unless it is made in good faith under a mistaken construction of a scheme². On setting aside an improper nomination the court has no jurisdiction to nominate proper beneficiaries, where by the charity's constitution the nomination rests with the trustees³.

No application to the court to set aside the election of any person may be made by any other person who claims to be the proper object of a charity unless the making of the application is authorised by the Charity Commission⁴.

Where the objects of a charity have been nominated for many years by the wrong persons, the court will not compel them to account for the payments made⁵.

1 *Re Nettle's Charity* (1872) LR 14 Eq 434.

2 *Re Storie's University Gift* (1860) 30 LJCh 193 at 199 per Turner LJ.

- 3 *Re Storie's University Gift* (1860) 30 LJCh 193 at 198 per Turner LJ.
- 4 See the Charities Act 1993 s 33(2); and PARA 588. As to the Charity Commission see PARAS 538-572.
- 5 *A-G v Rigby* (1732) 3 P Wms 145.

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(4) SURPLUS INCOME

130. Whole property given: surplus and later accretion.

Where, at the date of the bequest, the property given is more than sufficient to satisfy the purposes specified in the will, and it also appears that the testator intended to give the whole property to charity, but was mistaken only as to the quantum, the whole is applicable to increase the charities specified or *cy-près*¹.

Where, however, it appears on the face of a will that the testator knew that the value of his estate was or might be more than the amount of the specific appropriation, and he has expressed no intention of devoting the whole to charity, the surplus does not go to charity, but either goes beneficially to the donees to whom the property is given in trust for the charitable purposes² or results to the testator and those claiming under him³.

Where there is a direction to make specific charitable payments out of the income, it is a question of construction in each case whether the intention is to devote the whole property to charity⁴. Where the surplus income is directed to be applied in repairing the premises given to the charity, the whole property is held to have been devoted to charity⁵.

If property, or the whole of the income arising from it⁶, as, for example, a rentcharge equal to the annual value of the land charged⁷, is given to charity any subsequent increase in the value of the property accrues to the charity⁸.

A gift of income to a charity in perpetuity does not necessarily carry with it a right to the capital; it depends on the terms of the gift⁹.

1 *Re Monk, Giffen v Wedd* [1927] 2 Ch 197, CA; *A-G v Earl of Winchelsea* (1791) 3 Bro CC 373; *A-G v Minshull* (1798) 4 Ves 11; *Arnold v A-G* (1698) Show Parl Cas 22, HL. For cases on surplus capital see PARA 170. Surplus income may in these circumstances be applied by a scheme under the Charities Act 1993 s 13(1)(b) (see PARA 213). As to *cy-près* applications by scheme see PARA 208 et seq.

2 *A-G v Skinners' Co* (1827) 2 Russ 407 at 443 per Lord Eldon LC; *A-G v Skinners' Co* (1833) 5 Sim 596. See also *Re Jordeyn's Charity* (1833) 1 My & K 416; *A-G v Trinity College, Cambridge* (1856) 24 Beav 383; and the cases cited in PARA 132 note 4.

3 *Re Stanford, Cambridge University v A-G* [1924] 1 Ch 73.

4 *A-G v Bristol Corp'n* (1820) 2 Jac & W 294 at 315, 318 per Lord Eldon LC; *Beverley Corp'n v A-G* (1857) 6 HL Cas 310 at 333 per Lord Wensleydale; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369 at 393-394 per Lord Campbell LC, and at 406 per Lord Cranworth.

5 *Beverley Corp'n v A-G* (1857) 6 HL Cas 310 at 324 per Lord Chelmsford LC; *Merchant Taylors' Co v A-G* (1871) 6 Ch App 512; *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1.

6 *A-G v Skinners' Co* (1827) 2 Russ 407 at 411 per Lord Eldon LC (gift of rents and profits equivalent to gift of the lands themselves); *Southmolton Corp'n v A-G* (1854) 5 HL Cas 1 at 31-32 per Lord St Leonards; *Beverley Corp'n v A-G* (1857) 6 HL Cas 310.

7 *Kennington Hastings Case* (1612) Duke 71; *Hynshaw v Morpeth Corp*n (1629) Duke 69; *Eltham Inhabitants v Warreyn* (1634) Duke 67; *Sutton Colefield Case* (1635) Duke 68.

8 *Ex p Jortin* (1802) 7 Ves 340; *A-G v Bristol Corp*n (1820) 2 Jac & W 294; *A-G v Wilson* (1834) 3 My & K 362.

9 *Re Levy, Barclays Bank Ltd v Board of Guardians and Trustees for the Relief of the Jewish Poor* [1960] Ch 346, [1960] 1 All ER 42, CA.

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131. Gift of surplus: surplus and later accretion.

If a testator gives particular sums, not exhausting the entire income, for specified charitable purposes, and gives the remainder of the income for other charitable purposes, a question of construction arises whether any increase in the income is divisible pro rata among the specified objects and the objects entitled to the residue¹, or whether the whole residue of the augmented income passes to the objects entitled to the residue².

If there is an express gift of surplus income of the donee who is charged with the payments, this may be interpreted in two ways: either (1) as a gift of the residue, whatever it may amount to, in which case the residuary donee is entitled to any increased income³; or (2) as a gift of an aliquot proportion of the whole, in which case the donee shares rateably with the other donees in any increase⁴. The question into which of these two classes a gift falls is a matter of construction, to be solved in each particular case by considering the instrument of foundation as a whole⁵. The court is not entitled to take a broad view of the parties' rights based on the donor's supposed intention⁶. Such words as 'overplus', 'surplus', or 'residue' do not necessarily indicate that the gift is residuary⁷. An express gift of surplus will be disregarded where, if effect were given to it, the donor's intention would be defeated⁸.

1 *A-G v Caius College* (1837) 2 Keen 150. See *A-G v Coopers' Co* (1812) 19 Ves 187; *A-G v Solly* (1835) 5 LJCh 5.

2 *Re Avenon's Charity, A-G v Pelly* (1912) 56 Sol Jo 241, reported on further consideration [1913] 2 Ch 261 (where the surplus, having exceeded what was necessary for the residuary purpose, was all applied cy-près to the residuary purpose); *Re Lepton's Charity, Ambler v Thomas* [1972] Ch 276, [1971] 1 All ER 799.

3 *Southmolton Corp*n v *A-G* (1854) 5 HL Cas 1; *Beverley Corp*n v *A-G* (1857) 6 HL Cas 310 at 326 per Lord Chelmsford LC; *Re Rowe, Merchant Taylors' Co v London Corp*n (1914) 30 TLR 528.

4 *A-G v Drapers' Co, Kendrick's Charity* (1841) 4 Beav 67; *A-G v Jesus College, Oxford* (1861) 29 Beav 163; and see the cases cited in note 3.

5 *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369 at 405-406 per Lord Cranworth.

6 *Re Lepton's Charity, Ambler v Thomas* [1972] Ch 276, [1971] 1 All ER 799, where the disparity resulting from the increase of income was alleviated by the application of the Charities Act 1960 s 13(1)(a)(ii), (e)(iii) (repealed) (see now the Charities Act 1993 s 13; and PARA 213).

7 *Beverley Corp*n v *A-G* (1857) 6 HL Cas 310; *Southmolton Corp*n v *A-G* (1854) 5 HL Cas 1 at 25-26 per Lord Cranworth LC. As to the expression 'or thereabouts' see also *A-G v Trinity College, Cambridge* (1856) 24 Beav 383 at 392-393 per Romilly MR. No difficulty arises where the instrument expressly directs the surplus income (*Re Jordeyn's Charity* (1833) 1 My & K 416; *Southmolton Corp*n v *A-G* at 5 per Lord Cranworth LC), or any subsequent increase (*Charitable Donations and Bequests Comrs v Baroness De Clifford* (1841) 1 Dr & War 245), to be applied for charitable or other purposes or for the benefit of the donees (*A-G v Gascoigne* (1833) 2 My & K 647, where the executors took beneficially; *A-G v Skinners' Co* (1827) 2 Russ 407; *A-G v Drapers' Co, Kendrick's Charity* (1841) 4 Beav 67).

8 *Re Ashton's Charity* (1859) 27 Beav 115 (gift of surplus to six 'almswomen', who would have ceased to be almswomen if they received the whole of the largely increased surplus income, treated as a gift to charity generally).

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132. No gift of surplus: surplus and later accretion.

If, at the time of the gift, the specific payments do not exhaust the whole income, and there is no express gift of the surplus, but there is a clear intention, whether express or implied, to attach a charitable trust to the whole property, the surplus will be devoted to charity, however deficient may be the appropriation of the whole income, for the general charitable intention will prevail¹.

In such a case the donees will not be entitled to the surplus or increase unless they are themselves a charity², or there are other circumstances from which a contrary intention can be inferred³. If, however, there is no general intention to devote the whole to charity, the surplus income belongs to the parties charged with making the payments, and not to the charities⁴, notwithstanding that such specific payments, by lapse of time or change of circumstances, have become insufficient to satisfy the purposes for which they were originally made⁵; for the absence of any disposition of the surplus is *prima facie* an indication of an intention to benefit the donee⁶.

This rule has been frequently applied in the case of gifts to corporations such as colleges⁷, city companies⁸, or local authorities⁹, or a dean and canons¹⁰, subject to or charged with specific charitable payments which do not exhaust the income; but the principle is not confined to gifts to such bodies¹¹.

1 *Arnold v A-G* (1698) Show Parl Cas 22, HL; *A-G v Sparks* (1753) Amb 201; *A-G v Painter Stainers' Co* (1788) 2 Cox Eq Cas 51; *A-G v Haberdashers' Co* (1792) 4 Bro CC 103; *A-G v Bristol Corp* (1820) 2 Jac & W 294 at 318 per Lord Eldon LC; *A-G v Skinners' Co* (1827) 2 Russ 407 at 442 per Lord Eldon LC; *Mystery of Mercers v A-G* (1828) 2 Bli NS 165, HL; *A-G v Drapers' Co* (1840) 2 Beav 508; *A-G v Coopers' Co* (1840) 3 Beav 29; *A-G v Grocers' Co* (1843) 6 Beav 526 at 546 per Lord Langdale MR; *Southmolton Corp v A-G* (1854) 5 HL Cas 1 at 32 per Lord St Leonards; *Beverley Corp v A-G* (1857) 6 HL Cas 310 at 318 per Lord Chelmsford LC; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369; *Shepherd v Bristol Corp* (1818) 3 Madd 319 at 352 per Leach V-C; affd on this point but revsd on other grounds sub nom *A-G v Bristol Corp* at 318 per Lord Eldon LC.

2 *A-G v Trinity College, Cambridge* (1856) 24 Beav 383 at 399 per Romilly MR; and see *A-G v Bristol Corp* (1820) 2 Jac & W 294.

3 *A-G v Drapers' Co* (1840) 2 Beav 508.

4 *A-G v Bristol Corp* (1820) 2 Jac & W 294 at 307 per Lord Eldon LC; *A-G v Skinners' Co* (1827) 2 Russ 407 at 443 per Lord Eldon LC; *A-G v Cordwainers' Co* (1833) 3 My & K 534; *A-G v Brazen Nose College* (1834) 2 Cl & Fin 295, HL; *A-G v Fishmongers' Co, Kneseworth's Will* (1841) 5 My & Cr 11; *A-G v Grocers' Co* (1843) 6 Beav 526; *Jack v Burnett* (1846) 12 Cl & Fin 812, HL; *Southmolton Corp v A-G* (1854) 5 HL Cas 1 at 34 per Lord St Leonards; *A-G v Trinity College, Cambridge* (1856) 24 Beav 383; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369; *Merchant Taylors' Co v A-G* (1871) 6 Ch App 512 at 519 per James LJ.

5 *A-G v Gascoigne* (1833) 2 My & K 647; *Charitable Donations and Bequests Comrs v Baroness De Clifford* (1841) 1 Dr & War 245.

6 *A-G v Trinity College, Cambridge* (1856) 24 Beav 383 at 392 per Romilly MR. See also *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1 at 19 et seq.

7 *A-G v Catherine Hall, Cambridge* (1820) Jac 381; *A-G v Brazen Nose College* (1834) 2 Cl & Fin 295, HL; *Jack v Burnett* (1846) 12 Cl & Fin 812, HL; *A-G v Trinity College, Cambridge* (1856) 24 Beav 383; *A-G v Sidney Sussex College* (1869) 4 Ch App 722; *Re Lavelle, Concannon v A-G* [1914] 1 IR 194.

8 *A-G v Cordwainers' Co* (1833) 3 My & K 534; *A-G v Fishmongers' Co, Kneseworth's Will* (1841) 5 My & Cr 11; *A-G v Grocers' Co* (1843) 6 Beav 526; *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1 at 9 per Lord Chelmsford, and at 19 per Lord Cairns.

9 *A-G v Bristol Corp'n* (1820) 2 Jac & W 294; *Southmolton Corp'n v A-G* (1854) 5 HL Cas 1 at 34 per Lord St Leonards; *Beverley Corp'n v A-G* (1857) 6 HL Cas 310.

10 *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369.

11 *Merchant Taylors' Co v A-G* (1871) 6 Ch App 512 at 519 per James LJ. See *A-G v Smythies* (1833) 2 Russ & M 717 at 741 per Lord Brougham LC (master of an almshouse); and cf *A-G v Master of Brentwood School* (1833) 1 My & K 376; *A-G v Governors of Atherstone Free School* (1834) 3 My & K 544.

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133. No gift of surplus: no surplus but later accretion.

If there is no express gift of surplus income, but the specific payments exhaust the entire income at the time of the gift, any subsequent increase¹ in the income is applicable to similar purposes and prima facie in similar proportions². The deficiency in case of a decrease in the income is apportionable in the same way³. However, the court may, within certain limits, vary the proportions⁴.

This rule is equally applicable whether the donor thought at the time that he was disposing of the entire income⁵, or there are words that might have been interpreted as limiting the extent of the benevolent purpose had they stood alone, but such words are coupled with other words which show that the benevolent purpose operates to the extent of the whole fund⁶.

1 *Southmolton Corp'n v A-G* (1854) 5 HL Cas 1 at 32 per Lord St Leonards.

2 *Thetford School Case* (1609) 8 Co Rep 130b.

3 *Thetford School Case* (1609) 8 Co Rep 130b; *Sutton Colefield Case* (1635) Duke 68; *A-G v Townsend* (1670) Duke 34; *Arnold v A-G* (1698) Show Parl Cas 22, HL; *A-G v Coventry Corp'n* (1702) Colles 280, HL; *A-G v Johnson* (1753) Amb 190; *A-G Haberdashers' Co* (1792) 4 Bro CC 103; *A-G v Coopers' Co* (1812) 19 Ves 187; *A-G v Bristol Corp'n* (1820) 2 Jac & W 294 at 315, 317-318, 322 per Lord Eldon LC; *Mystery of Mercers v A-G* (1828) 2 Bli NS 165, HL; *A-G v Wilson* (1834) 3 My & K 362; *A-G v Brazen Nose College* (1834) 2 Cl & Fin 295 at 328, HL, per Lord Brougham LC; *A-G v Barham* (1835) 4 LJCh 128; *A-G v Coopers' Co* (1840) 3 Beav 29; *A-G v Christ's Hospital* (1841) 4 Beav 73; *A-G v Gilbert* (1847) 10 Beav 517; *Southmolton Corp'n v A-G* (1854) 5 HL Cas 1; *Beverley Corp'n v A-G* (1857) 6 HL Cas 310 at 320 per Lord Chelmsford LC; *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1.

4 *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369 at 452 per Lord Kingsdown; *A-G v Marchant* (1866) LR 3 Eq 424 at 430 per Kindersley V-C.

5 *A-G v Marchant* (1866) LR 3 Eq 424 at 430 per Kindersley V-C; and see *A-G v Bristol Corp'n* (1820) 2 Jac & W 294 at 332 per Lord Eldon.

6 *A-G v Painter Stainers' Co* (1788) 2 Cox Eq Cas 51 at 55.

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134. Whether donees take surplus and increase.

The donees are entitled to the surplus where it has been charged with the expense of repairs¹, or where they have bound themselves by penalties or covenanted to pay fixed sums to charity whether the income of the property is sufficient or not².

Donees will not take beneficially where there has been long usage to the contrary, or where by the instrument of foundation they are given power to regulate the charity³.

Speaking generally, the increase will belong to the donee, first, if the gift be to the donee subject to certain payments to others; secondly, if the gift be upon condition of making certain payments subject to a forfeiture upon non-performance of the condition; or, thirdly, if the donee might be a loser by the insufficiency of the fund⁴.

In the case of a gift to a particular body for the benefit of the body with a provision that certain members or officials are to receive specific annual sums, the body is entitled to the bulk of the property with the full increase, and the particular members or officers are entitled only to the sums specifically given them⁵. Thus, where property is given not for purposes of individual benefit, but for the performance of duties, any increase of income exceeding reasonable remuneration for the performance of those duties will be applied to other charitable purposes⁶.

A gift of the income of property to maintain poor scholars, each having so much a day, is a gift to them of the whole, and entitles them to the surplus⁷.

1 *A-G v Skinners' Co* (1827) 2 Russ 407; *A-G v Coopers' Co* (1840) 3 Beav 29.

2 *Jack v Burnett* (1846) 12 Cl & Fin 812 at 828, HL, per Lord Cottenham LC. See also *A-G v Bristol Corp* (1820) 2 Jac & W 294 at 303 per Lord Eldon LC; and cf *A-G v Merchant Venturers' Co, Bristol* (1848) 17 LJCh 137.

3 *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448.

4 *Jack v Burnett* (1846) 12 Cl & Fin 812 at 828, HL, per Lord Cottenham.

5 *Southmolton Corp v A-G* (1854) 5 HL Cas 1 at 32-33 per Lord St Leonards; and see *A-G v Bristol Corp* (1820) 2 Jac & W 294 at 317 per Lord Eldon LC. In the case of a gift to a corporation consisting of a master and almsmen, with a direction that the almsmen should receive fixed stipends, the almsmen were not allowed to share rateably with the master in the increased income: *A-G v Smythies* (1833) 2 Russ & M 717 at 747-748 per Lord Brougham LC; *Re Ashton's Charity* (1859) 27 Beav 115, where the increased income was applied to charity generally.

6 *Thetford School Case* (1609) 8 Co Rep 130b; *A-G v Bristol Corp* (1820) 2 Jac & W 294; *A-G v Smythies* (1833) 2 Russ & M 717 at 747 per Lord Brougham LC. Distinguish the case of a gift to a college for its maintenance with a provision that each scholar should have a certain sum, in which case the scholars are not entitled to share in any increased income: *A-G v Smythies* at 747 per Lord Brougham LC.

7 *A-G v Master of Brentwood School* (1833) 1 My & K 376 at 394 per Leach MR; and see *A-G v Governors of Atherstone Free School* (1834) 3 My & K 544 at 555 per Lord Brougham LC.

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(5) CONDITIONAL AND LIMITED INTERESTS

135. Conditions precedent.

A charitable gift may be made subject to conditions precedent, for example, that the gift shall take effect only if the testator's estate is sufficient for the intended object¹ or amounts to a

certain sum². Gifts to hospitals have frequently been made subject to conditions precedent relating to nationalisation³.

A legacy to a fund raised for the purpose of effecting a particular charitable object may be construed as a gift on condition that the particular object proves to be practicable⁴; and a gift may be made for a particular charitable purpose on condition that other property is given for the same object⁵.

Such gifts of realty fail if the condition is not⁶, or cannot be⁷, fulfilled or offends against the rule against perpetuities⁸, unless the fulfilment of the condition is not essential to the gift⁹. In the case of gifts of personalty subject to conditions precedent which are illegal, a distinction is drawn between illegality involving that which is inherently wrong¹⁰ and that which is wrong only because it is prohibited by law¹¹; in the latter case the invalidity of the condition does not avoid the gift and the donee takes free from the condition¹².

Cases of gifts subject to conditions precedent are to be distinguished from cases in which there is an immediate outright gift to charity but the particular application directed is postponed and may depend on the occurrence of events contingent and uncertain¹³.

1 *Cherry v Mott* (1836) 1 My & Cr 123.

2 *Thomas v Howell* (1874) LR 18 Eq 198; and see *Re Swain, Monckton v Hands* [1905] 1 Ch 669, CA.

3 *Re Frere, Kidd v Farnham Group Hospital Management Committee* [1951] Ch 27, [1950] 2 All ER 513; *Re Buzzacott, Munday v King's College Hospital* [1953] Ch 28, [1952] 2 All ER 1011; *Connell's Trustees v Milngavie District Nursing Association* 1953 SC 230, Ct of Sess; *Re Lowry's Will Trusts, Barclays Bank Ltd v United Newcastle-upon-Tyne Hospitals Board of Governors* [1967] Ch 638, [1966] 3 All ER 955.

4 *Re London University Medical Sciences Institute Fund, Fowler v A-G* [1909] 2 Ch 1, CA.

5 *McCormick v Queen's University of Belfast* [1958] NI 1.

6 *Cherry v Mott* (1836) 1 My & Cr 123.

7 *Re Emson, Grain v Grain* (1905) 74 LJCh 565.

8 See PARA 141.

9 *Re Selinger's Will Trusts, Midland Bank Executor and Trustee Co Ltd v Levy* [1959] 1 All ER 407, [1959] 1 WLR 217 (a suitable charity to be found within one year of testator's death; if none found legacy to be revoked; held only to be intended to prevent delay in administration, so that where administration was delayed for other reasons, the gift took effect, even though a recipient was not found until two years after the death).

10 *le malum in se*.

11 *le malum prohibitum*. See *Re Piper, Dodd v Piper* [1946] 2 All ER 503 at 505, where Romer J observed: 'the difference between *malum prohibitum* and *malum in se* has never been very precisely defined or considered'.

12 *Re Elliott, Lloyds Bank Ltd v Burton-on-Trent Hospital Management Committee* [1952] Ch 217, [1952] 1 All ER 145 (condition relating to upkeep of a grave, involving only *malum prohibitum*); *Re Hepplewhite's Will Trusts* (1977) Times, 21 January (gift subject to several conditions, some valid, some invalid: gift good subject only to valid conditions). As to distinctions between various types of impossibility see *Re Moore, Trafford v Maconochie* (1888) 39 ChD 116, CA.

13 *Chamberlayne v Brockett* (1872) 8 Ch App 206; *Re Swain, Monckton v Hands* [1905] 1 Ch 669, CA.

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136. Conditions subsequent.

Charitable gifts may be made subject to conditions subsequent which come into effect if, after the gift has taken effect, some act is omitted to be done¹ or some act is done². However, a mere intention to make the enjoyment of the gift conditional is inoperative unless it is actually carried out³. There have been many examples of conditions subsequent relating to the nationalisation of charitable institutions⁴.

Conditions subsequent include: (1) common law conditions⁵, a breach of which involves forfeiture to the grantor or his representatives⁶; (2) conditions enforceable in equity⁷; and (3) conditions followed by executory limitations or gifts over⁸.

If the condition infringes the rule against perpetuities⁹, or is illegal¹⁰, or involves a breach of trust¹¹, or is repugnant to the gift¹², or is void for uncertainty¹³, the charity takes the gift discharged from the condition and, if there is a gift over, that also fails¹⁴. Where trustees are given a discretionary power to exclude certain institutions from benefit under a charitable gift, the validity of that power is governed by the same principles as a gift over¹⁵; thus if the power involves perpetuity and is not restricted to charity it is bad and the initial gift to charity is unfettered¹⁶.

Charitable trusts have sometimes been declared subject to express powers of revocation, but there has apparently been no decision on the validity of such a power except as regards the rule against perpetuities¹⁷.

However, if the condition itself is not bad but the gift over cannot take effect because it is to a person who is not an object of the power which is exercised by the gift¹⁸, or because of the mortmain laws¹⁹, the prior estate is defeated on the fulfilment of the condition and the property is held upon a resulting trust or falls into residue.

1 *A-G v Christ's Hospital* (1790) 3 Bro CC 165 (children from particular parish to be maintained); *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA (keeping a tomb in repair); *Re Conington's Will* (1860) 6 Jur NS 992 (incumbent of particular church to be maintained and special services to be held); *Re Robinson, Wright v Tugwell* [1892] 1 Ch 95 (approved [1897] 1 Ch 85, CA) (black gown to be worn in pulpit; but see *Re Robinson, Wright v Tugwell* [1923] 2 Ch 332, where this condition was dispensed with); *Re Parker's Charity* (1863) 32 Beav 654 (anniversary sermon).

2 *Milbank v Lambert* (1860) 28 Beav 206 (vicar not to collect tithes); *Re Barrett's Trusts, Dyson v Sheffield Corp'n* (1910) 26 TLR 330.

3 *Yates v University College, London* (1875) LR 7 HL 438 (where the testator omitted to make rules compliance with which was required by the gift); *University College of North Wales v Taylor* [1908] P 140, CA (where the condition intended to be attached to the gift was contained in a memorandum excluded from probate as not being sufficiently referred to in the will for identification).

4 Eg *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL; *Re Bawden's Settlement, Besant v London Hospital Board of Governors* [1953] 2 All ER 1235, [1954] 1 WLR 33n; *Mollison's Trustees v Aberdeen General Hospitals Board of Management* 1953 SC 264.

5 *Re Hollis' Hospital Trustees and Hague's Contract* [1899] 2 Ch 540; *Re Da Costa, Clarke v Church of England Collegiate School of St Peter* [1912] 1 Ch 337.

6 Shep Touch 117, 119, 120; Co Litt 201a.

7 See the cases cited in PARA 75 (where words of condition created a trust). See also the cases where charities accepting property subject to conditions were held bound to perform them, eg *A-G v Caius College* (1837) 2 Keen 150 at 163 per Lord Langdale MR; and PARA 137.

8 See *Christ's Hospital v Grainger* (1849) 1 Mac & G 460; *Re Conington's Will* (1860) 6 Jur NS 992; *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA; *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL.

9 *Re Talbot, Jubb v Sheard* [1933] Ch 895; *Re Bawden's Settlement, Besant v London Hospital Board of Governors* [1953] 2 All ER 1235, [1954] 1 WLR 33n.

- 10 *Re Amos, Carrier v Price* [1891] 3 Ch 159 at 167 per North J (contrary to the Mortmain Acts).
- 11 *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA.
- 12 *Lydiatt v Foach* (1700) 2 Vern 410; *Watson v Hinsworth Hospital* (1707) 2 Vern 596 (condition that rent of property given to charity should never be raised); *A-G v Catherine Hall, Cambridge* (1820) Jac 381 at 395 per Lord Eldon LC; *A-G v Greenhill* (1863) 33 Beav 193 (conditions restricting alienation); *Re Restell, Royal Hospital for Incurables v Restell* (1901) 17 TLR 395; *Hope v Gloucester Corpn* (1855) 7 De GM & G 647. See also the cases cited in PARA 161 note 11.
- 13 See *Re Hayes' Will Trusts, Dobie v National Hospital Board of Governors* [1953] 2 All ER 1242, [1954] 1 WLR 22 (gift to 29 institutions with power to trustees to exclude any if impracticable or inequitable that they should share). The requirement of certainty is stricter for a condition subsequent than for a condition precedent: *Blathwayt v Baron Cawley* [1976] AC 397, [1975] 3 All ER 625, HL; *Re Barlow's Will Trusts* [1979] 1 All ER 296, [1979] 1 WLR 278.
- 14 See *Yates v University College, London* (1875) LR 7 HL 438, followed in *Re Barnett, Waring v Painter-Stainers' Co* (1908) 24 TLR 788; *Re Barker, Sherrington v Dean and Chapter of St Paul's Cathedral* (1909) 25 TLR 753; *Re Dalziel, Midland Bank Executor and Trustee Co Ltd v St Bartholomew's Hospital* [1943] Ch 277, [1943] 2 All ER 656. Conversely, gifts to individuals subject to conditions which infringed the mortmain laws were taken by the legatee free from the condition: *Doe d Burdett v Wrighte* (1819) 2 B & Ald 710; *Poor v Mial* (1821) 6 Madd 32; *Henchman v A-G* (1834) 3 My & K 485.
- 15 *Re Hayes' Will Trusts, Dobie v National Hospital Board of Governors* [1953] 2 All ER 1242, [1954] 1 WLR 22; *George Drexler Ofrex Foundation Trustees v IRC* [1966] Ch 675, [1965] 3 All ER 529.
- 16 *Re Bawden's Settlement, Besant v London Hospital Board of Governors* [1953] 2 All ER 1235, [1954] 1 WLR 33n. The condition upon which a gift over effected under such a power would take effect would be the trustees' decision to exercise the power; since they cannot effect it if the power is bad, the condition can never occur.
- 17 In *Re Sir Robert Peel's School at Tamworth, ex p Charity Comrs* (1868) 3 Ch App 543, the validity of the power was assumed but the decision turned on a quite different point; in *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA, the validity of the power was not in issue. In *Re Watson's Settlement Trusts, Dawson v Reid* [1959] 2 All ER 676, [1959] 1 WLR 732 the power of revocation was not limited to the perpetuity period and permitted new non-charitable trusts to be declared; accordingly it was held to be invalid. Under the mortmain laws such a power, if attached to a gift of realty, would have rendered the gift void. Apparently the perpetuity period in the case of a revocable settlement by deed runs from the moment when it is no longer revocable: Morris and Leach *Rule against Perpetuities* (2nd Edn, 1962) p 57. As to the rule against perpetuities see PARA 141. As to the repeal of the law of mortmain see PARAS 82-83.
- 18 *Doe d Blomfield v Eyre* (1848) 5 CB 713.
- 19 *Robinson v Wood* (1858) 27 LJCh 726.

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137. Acceptance of conditional gift.

Where a gift subject to a condition is accepted, the condition must be fulfilled, whether or not the subject matter of the gift is adequate for the purpose¹. The subsequent abandonment of the benefit of a gift to which a condition is attached does not relieve the party who accepted it from the burden of fulfilling the condition². Trustees are not bound to accept property subject to a special trust or condition³.

As a rule, donees who accept conditional gifts are entitled to have the property vested in them⁴. Where the condition is a continuing one and there are no special trustees to hold the fund, it may be retained in court and the income paid out so long as the conditions are performed⁵.

- 1 *A-G v Christ's Hospital* (1790) 3 Bro CC 165; *A-G v Andrew* (1798) 3 Ves 633 at 646 per Lord Eldon LC; *A-G v Caius College* (1837) 2 Keen 150; *Jack v Burnett* (1846) 12 Cl & Fin 812 at 828, HL, per Lord Cottenham LC; *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1 at 19 per Lord Cairns; *Re Richardson, Shuldham v Royal National Lifeboat Institution* (1887) 56 LJCh 784; and see *A-G v Merchant Venturers' Co, Bristol* (1848) 17 LJCh 137.
- 2 *A-G v Christ's Hospital* (1830) 1 Russ & M 626.
- 3 *A-G v Andrew* (1798) 3 Ves 633 (affd sub nom *Andrew v Master and Wardens of Merchant Taylors' Co* (1800) 7 Ves 223, HL); *A-G v Caius College* (1837) 2 Keen 150.
- 4 *A-G v Christ's Hospital* (1790) 3 Bro CC 165; *Re Richardson, Shuldham v Royal National Lifeboat Institution* (1887) 56 LJCh 784. See also *Re Lopes, Bence-Jones v Zoological Society of London* [1931] 2 Ch 130; *Re Restell, Royal Hospital for Incurables v Restell* (1901) 17 TLR 395.
- 5 *Re Robinson, Wright v Tugwell* [1892] 1 Ch 95; approved [1897] 1 Ch 85, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(5) CONDITIONAL AND LIMITED INTERESTS/138. Condition with gift over strictly enforced.

138. Condition with gift over strictly enforced.

The rule of equity under which relief is given against a forfeiture on breach of condition¹ does not apply where there is a gift over on breach². Thus, where property is given upon certain charitable trusts, with a proviso that in certain events it is to be transferred and held upon other charitable trusts, the property will pass upon the happening of the particular event³. If the event be the trustees' neglect of the terms of their trust, the gift over will take effect notwithstanding the general rule that a charitable purpose is not defeated by the trustee's failure or neglect or the failure of trust machinery⁴, and that the position of one beneficiary under a trust ought not to be prejudiced as against other beneficiaries by any neglect on the trustee's part⁵. However, even in such a case, the court has power to make a scheme which will defeat the gift over and preserve the substance of the prior gift⁶.

On the other hand, where the gift over is to be considered as a collateral remedy to secure the testator's charitable intention expressed in the prior gift, the trustee's neglect to observe a condition⁷ or perform a trust in strict accordance with the directions in the will⁸ may not occasion a forfeiture. The dividing line between the two classes of case is very difficult to find.

The onus of proof on the question whether a forfeiture has taken place lies on the party alleging it⁹. The court construes forfeiture clauses strictly¹⁰.

If the right of a beneficiary entitled under a gift over or forfeiture becomes barred by limitation¹¹, the trustees or the beneficiaries under the prior gift hold the property free from the gift over, but on the trusts of the original gift¹². They cannot themselves declare new trusts of the property¹³.

- 1 *Cage v Russel* (1681) 2 Vent 352; *Hollinrake v Lister* (1826) 1 Russ 500 at 508 per Lord Gifford MR. See **WILLS** vol 50 (2005 Reissue) PARA 440.
- 2 *Simpson v Vickers* (1807) 14 Ves 341.
- 3 *Re Malling Abbey Trusts, Beaumont v Dale* (1915) 31 TLR 397, CA; *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL.
- 4 *Brown v Higgs* (1803) 8 Ves 561 at 574 per Lord Eldon LC.

5 *Re Jones, Williams v Rowlands* [1948] Ch 67, [1947] 2 All ER 716.

6 *Re Hanbey's Will Trusts, Cutlers' Co v President and Governors of Christ's Hospital, London* [1956] Ch 264, [1955] 3 All ER 874, where no scheme was ordered, however, owing to the prolonged though honest breaches of trust and the difficulty of settling any useful scheme which would apply the trust properly cy-près with the objects the testator had in mind in his will.

7 *A-G v Christ's Hospital* (1830) 1 Russ & M 626. See also *Re Selinger's Will Trusts, Midland Bank Executor and Trustee Co Ltd v Levy* [1959] 1 All ER 407, [1959] 1 WLR 217 (condition as to time, held not to be of the essence of the gift and non-fulfilment of the condition not to cause a forfeiture).

8 *Re Hanbey's Will Trusts, Cutlers' Co v President and Governors of Christ's Hospital, London* [1956] Ch 264, [1955] 3 All ER 874; *Re Parish of Upton Warren* (1833) 1 My & K 410; *Re Richardson's Will* (1887) 58 LT 45.

9 *Re Hartshill Endowment* (1861) 30 Beav 130; and see *Re Conington's Will* (1860) 6 Jur NS 992. In both these cases the question was whether a condition requiring the performance of the Church of England service had been satisfied.

10 *Re Jones, Williams v Rowlands* [1948] Ch 67, [1947] 2 All ER 716 (where a condition relating to the time within which certain buildings were to be erected was held not to have come into operation either because the trustees could not be said to have failed to complete what they had not been allowed to begin or because the condition was subject to an overriding condition which had not been fulfilled). See also *Re Beard's Trusts, Butlin v Harris* [1904] 1 Ch 270 (where a gift over on a school's becoming subject to a school board was held not to take effect on the school's coming under the control of a county council, and no forfeiture took place); *Re Gregory, How v Charrington* (1935) 52 TLR 130 (where a gift over if an orphanage was taken over for or subsidised by the state or by any public or local authority was held not to take effect although the school belonging to the orphanage was recognised as a public elementary school and received grants from a local authority in aid of teachers' salaries); and *Re Blunt's Trusts, Wigan v Clinch* [1904] 2 Ch 767 (where a forfeiture was held to have taken place, inasmuch as there was a bequest of an annuity for the support of national schools with a gift over if funds necessary for carrying on the schools should be raised under any statutory powers).

11 See *Re Trustees of Orchard Street Schools* [1878] WN 211. See also the Limitation Act 1980; and **LIMITATION PERIODS**. As to the time limit for actions in respect of trust property see s 21; and **LIMITATION PERIODS** vol 68 (2008) PARA 1140 et seq.

12 *Re Ingleton Charity, Croft v A-G* [1956] Ch 585, [1956] 2 All ER 881 (a case of automatic reverter under the School Sites Act 1841). See also *Re Trustees of Orchard Street Schools* [1878] WN 211.

13 *Re Ingleton Charity, Croft v A-G* [1956] Ch 585, [1956] 2 All ER 881.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(5) CONDITIONAL AND LIMITED INTERESTS/139. Gifts of limited interests.

139. Gifts of limited interests.

There may be a gift to charity of less than an absolute interest in property and, subject to the application of the rule against perpetuities¹, the interest given may be an interest determinable upon the happening of some event which is contingent and may never occur². Thus, income may be given for the support of a school so long as it should continue to be carried on according to the trusts of its original deed³, or to an incumbent so long as sittings in the parish church were free of pew-rents⁴, or there may be a gift to a society during such time as it maintains two graves⁵. Similarly, there may be a gift to charity limited not to take effect until the occurrence of a particular event⁶.

In such cases, the interest which is not disposed of belongs to the donor, and devolves as part of his estate⁷.

1 There is doubt as to whether the rule applies to these interests at common law; it does apply in relation to dispositions taking effect after 15 July 1964: see PARA 143.

2 *Lyons Corp v Advocate-General of Bengal* (1876) 1 App Cas 91, PC; *Re Randell, Randell v Dixon* (1888) 38 ChD 213; *Re Hartshill Endowment* (1861) 30 Beav 130; *A-G v Molland* (1832) 1 You 562; *A-G v Pyle* (1738) 1 Atk 435. As to gifts of limited duration see PARA 172.

3 *Re Blunt's Trusts, Wigan v Clinch* [1904] 2 Ch 767.

4 *Re Randell, Randell v Dixon* (1888) 38 ChD 213. See also *Re Cooper's Conveyance Trusts, Crewdson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096.

5 *Re Chardon, Johnston v Davies* [1928] Ch 464 (a fuller account of the will, and the court's order, in this case are set out in Tudor on Charities (5th Edn, 1929) p 701); *Re Chambers' Will Trusts, Official Trustees of Charitable Funds v British Union for the Abolition of Vivisection* [1950] Ch 267 (distinguished in *Re Wightwick's Will Trusts, Official Trustees of Charitable Funds v Fielding-Ould* [1950] Ch 260, [1950] 1 All ER 689, where the limited gift was a gift on trust for non-charitable purposes and involved a perpetuity, and so failed).

6 *A-G v Earl of Craven* (1856) 21 Beav 392 at 400 per Romilly MR; *Yates v University College, London* (1875) LR 7 HL 438; *Re Roberts, Repington v Roberts-Gawen* (1881) 19 ChD 520, CA.

7 *A-G v Pyle* (1738) 1 Atk 435; *Re Randell, Randell v Dixon* (1888) 38 ChD 213; *Re Blunt's Trusts, Wigan v Clinch* [1904] 2 Ch 767.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(6) RULES AGAINST REMOTENESS/140. Rule against perpetual trusts.

(6) RULES AGAINST REMOTENESS

140. Rule against perpetual trusts.

Charitable trusts are exempt from the rule that a gift is void if its terms preclude the alienation of the capital of the fund for a period which may last longer than the perpetuity period¹, whereas a perpetual trust for a non-charitable purpose is void² and not less so because the trustee is a charitable society³.

A charitable trust may, therefore, be made to last for any period, whether perpetual, indefinite or limited⁴, and for the same reason a gift of income to a charity in perpetuity does not necessarily carry with it the capital, as it would in the case of a gift to an individual⁵.

1 This is the rule referred to as the rule against perpetuities in eg *Chamberlayne v Brockett* (1872) 8 Ch App 206 at 211 per Lord Selborne LC; *A-G v Webster* (1875) LR 20 Eq 483 at 491 per Jessel MR; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 581-582, HL, per Lord Macnaghten. It has also been referred to as the rule against inalienability: *Re Chardon, Johnston v Davies* [1928] Ch 464; *Re Wightwick's Will Trusts, Official Trustees of Charitable Funds v Fielding-Ould* [1950] Ch 260, [1950] 1 All ER 689. It is to be distinguished from the rule against remoteness of vesting, commonly known as the rule against perpetuities (see PARA 141). It has not been affected by the Perpetuities and Accumulations Act 1964: see s 15(4). See also the Perpetuities and Accumulations Act 2009 s 2(1)-(3) (not yet in force); and PARA 142. As to the perpetuity period see PARA 141 note 4; and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1012. As to the general application of the rule against perpetuities as from a day to be appointed see the Perpetuities and Accumulations Act 2009 s 1 (not yet in force).

2 *Thomson v Shakespear* (1860) 1 De GF & J 399; *Carne v Long* (1860) 2 De GF & J 75; *Re Rickard, Rickard v Robson* (1862) 31 Beav 244; *Re Dutton, ex p Peake* (1878) 4 Ex D 54; *Re St Stephen, Coleman Street, Re St Mary the Virgin, Aldermanbury* (1888) 39 ChD 492 at 503 per Jay J; *Re Norwich Town Close Estate Charity* (1888) 40 ChD 298 at 307, CA, per Cotton LJ; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 581, HL, per Lord Macnaghten; and see PARA 62, especially the cases there cited on gifts to unincorporated associations. See also *A-G of the Cayman Islands v Wahr-Hansen* [2001] 1 AC 75, [2000] 3 All ER 642, PC.

3 *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252 at 258, CA, per Lindley LJ; and see *Re Freeman, Shilton v Freeman* [1908] 1 Ch 720, CA. As to trusts for repairing tombs see PARA 61.

4 *Re Randell, Randell v Dixon* (1888) 38 ChD 213; *Re Bowen, Lloyd Phillips v Davis* [1893] 2 Ch 491.

5 *Re Levy, Barclays Bank Ltd v Board of Guardians and Trustees for the Relief of the Jewish Poor* [1960] Ch 346, [1960] 1 All ER 42, CA; *Re Beesty's Will Trusts, Farrar v Royal Alfred Merchant Seamen's Society* [1966] Ch 223, [1964] 3 All ER 82.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(6) RULES AGAINST REMOTENESS/141. Rule against perpetuities.

141. Rule against perpetuities.

Charitable trusts are subject to the rule against perpetuities, which prevents the creation of interests in property which are to vest at too remote a time, in the same way as any other trust¹ except in one respect, that being the case of a gift over from one charity to another².

In the case of a disposition under an instrument taking effect before 16 July 1964³, a charitable trust which need not take effect within the perpetuity period is void⁴. Thus, trusts for the benefit of charity limited to take effect after an indefinite failure of issue⁵, or upon alienation⁶, or upon the election of the next lieutenant-colonel of a regiment⁷, or upon some other condition precedent which might not be fulfilled within the perpetuity period⁸, failed⁹.

In its application to dispositions under instruments taking effect after 15 July 1964¹⁰, the rule was modified by the Perpetuities and Accumulations Act 1964¹¹. The changes most relevant to charitable gifts are that, instead of a period of lives in being plus 21 years, the perpetuity period in relation to a disposition may be a period specified as such of up to 80 years¹², and that a disposition which is void at common law is to be treated as valid until it becomes established that the vesting of the disposition must occur, if at all, after the end of the perpetuity period¹³. Changes were also made in relation to possibilities of reverter and of resulting trusts¹⁴. Many of the decisions under the old law would have been different under the statute.

As from a day to be appointed¹⁵ the rule against perpetuities is further modified by the Perpetuities and Accumulations Act 2009 and the following provisions apply to instruments taking effect¹⁶ (or wills being executed) on or after that date¹⁷. The perpetuity period is 125 years irrespective of whether a perpetuity period is specified¹⁸.

1 *Chamberlayne v Brockett* (1872) 8 Ch App 206. Thus an option to purchase land given to a charity is subject to the ordinary law as to perpetuities: *Worthing Corp v Heather* [1906] 2 Ch 532.

2 This exception is discussed in PARA 142.

3 I.e. the commencement date of the Perpetuities and Accumulations Act 1964. This Act affects instruments taking effect after 15 July 1964: see s 15(5); and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1009. Dispositions made after that date but pursuant to an instrument taking effect before 16 July 1964 are not affected: see s 8(2); and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1034. Where a disposition is made otherwise than by instrument, the Act applies as if it had been contained in an instrument taking effect when the disposition was made: s 15(6). As from a day to be appointed the Perpetuities and Accumulations Act 1964 does not apply in relation to an instrument taking effect on or after a day to be appointed under the Perpetuities and Accumulations Act 2009 s 22(2) but this does not prevent the Perpetuities and Accumulations Act 1964 from applying in relation to an instrument so taking effect if it is a will executed before that day or it is an instrument made in the exercise of a special power of appointment and the instrument creating the power took effect before that day: s 15(5A) (prospectively added by the Perpetuities and Accumulations Act 2009 s 16). At the date at which this volume states the law no such day had been appointed.

4 I.e. unless the prior limitation is in favour of charity: see PARA 142. The perpetuity period is defined as lives in being, plus 21 years: see **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1012. See however, as from a day to be appointed, the text and notes 15-18.

5 *Charitable Donations and Bequests Comrs v Baroness De Clifford* (1841) 1 Dr & War 245; *Re Johnson's Trusts* (1866) LR 2 Eq 716 at 720 per Page Wood V-C; and see *Re Roberts, Repington v Roberts-Gawen* (1881) 19 ChD 520, CA.

- 6 *Pewterers' Co v Governors of Christ's Hospital* (1683) 1 Vern 161.
- 7 *Re Lord Stratheden and Campbell, Alt v Lord Stratheden and Campbell* [1894] 3 Ch 265.
- 8 *Chamberlayne v Brockett* (1872) 8 Ch App 206; *Re White's Trusts* (1886) 33 ChD 449; *Re Wightwick's Will Trusts, Official Trustees of Charitable Funds v Fielding-Ould* [1950] Ch 260, [1950] 1 All ER 689; *Re Mander, Westminster Bank Ltd v Mander* [1950] Ch 547, [1950] 2 All ER 191; *Re Cooper's Conveyance Trusts, Crewdson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096; *Re Watson's Settlement Trusts, Dawson v Reid* [1959] 2 All ER 676, [1959] 1 WLR 732; *George Drexler Ofrex Foundation Trustees v IRC* [1966] Ch 675, [1965] 3 All ER 529.
- 9 These cases are to be distinguished from those in which there is an immediate effective gift to charity, but the particular application directed may not be possible until some time in the future: see eg *Chamberlayne v Brockett* (1872) 8 Ch App 206; *Re Swain, Monckton v Hands* [1905] 1 Ch 669, CA.
- 10 See note 3.
- 11 As to the Perpetuities and Accumulations Act 1964 generally see **PERPETUITIES AND ACCUMULATIONS**.
- 12 See the Perpetuities and Accumulations Act 1964 s 1; and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1010.
- 13 See the Perpetuities and Accumulations Act 1964 s 3(1); and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1009. How the perpetuity period is to be determined under this wait-and-see provision is governed by s 3(4), (5): see **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1011. Under s 3(5), the only permissible lives in being in relation to a charitable gift are likely to be those of the settlor (see s 3(5)(a)) and of any person entitled to a prior interest (see s 3(5)(d)).
- 14 See the Perpetuities and Accumulations Act 1964 s 12; PARA 143; and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1040.
- 15 The Perpetuities and Accumulations Act 2009 comes into force as from a day to be appointed by statutory instrument: see s 22(2).
- 16 The provisions also apply in relation to an instrument made in the exercise of a special power of appointment only if the instrument creating the power takes effect on or after that date: Perpetuities and Accumulations Act 2009 s 15(1)(b) (not yet in force).
- 17 See the Perpetuities and Accumulations Act 2009 s 15(1)(a) (not yet in force).
- 18 See the Perpetuities and Accumulations Act 2009 s 5 (not yet in force).

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142. Validity of gifts over.

An interest which is contingent upon the occurrence of an event which will cause a gift over to take effect is subject to the rule against perpetuities, so that, under the common law, if the event need not necessarily, or, under the Perpetuities and Accumulations Act 1964¹, if it does not, happen within the perpetuity period, the gift over is void.

However, this is subject to an exception in the case of a gift over from one charity to another on a certain event², whether the event is one which has any connection with the charitable purposes of the gift or not³. This exception does not extend to a non-charitable gift followed by a gift over in favour of charity, nor to a charitable gift with a gift over to private individuals⁴ or in favour of purposes which need not necessarily be charitable⁵.

Express gifts over to residue have generally been held not to be subject to the rule against perpetuities on the ground that they do no more than state the result which the law would imply in the absence of an express provision⁶.

As from a day to be appointed⁷ the Perpetuities and Accumulations Act 2009 provides the following relevant statutory exceptions to the rule against perpetuities in relation to charities⁸. The rule does not apply to an estate or interest created so as to vest in a charity on the occurrence of an event if immediately before the occurrence an estate or interest in the property concerned is vested in another charity⁹. Nor does the rule apply to a right exercisable by a charity on the occurrence of an event if immediately before the occurrence an estate or interest in the property concerned is vested in another charity¹⁰.

1 As to the Perpetuities and Accumulations Act 1964 generally see **PERPETUITIES AND ACCUMULATIONS**.

2 *Christ's Hospital v Grainger* (1849) 1 Mac & G 460; *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA; *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL, where it was decided that there was no difference where the gift over is to a charity incorporated by royal charter.

3 In *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA, the event was failure to keep a family vault in good repair. Although a trust to apply part of the money to the repair of the vault would have been void, the court held that a condition creating a perpetual inducement to do a lawful act was not void. In *Re Martin, Barclays Bank Ltd v Board of Governors of St Bartholomew's Hospital* [1952] WN 339, there was a gift of income upon a similar condition, and if ever the gravestones were not in good repair, a gift over to another charity; the condition attached to the gift of income was void but the condition which gave rise to the gift over was held nevertheless to be valid. See also *Re Lopes, Bence-Jones v Zoological Society of London* [1931] 2 Ch 130 and, for cases in which the condition did relate to the purposes of the gift, see *Re Parish of Upton Warren* (1833) 1 My & K 410; *Christ's Hospital v Grainger* (1849) 1 Mac & G 460; *Re Hanbey's Will Trusts, Cutlers' Co v President and Governors of Christ's Hospital, London* [1956] Ch 264, [1955] 3 All ER 874. In *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, [1952] 1 All ER 984, HL, the condition related to nationalisation of the hospital to which the prior gift was made.

4 *Re Bowen, Lloyd Phillips v Davis* [1893] 2 Ch 491 at 494 per Stirling J; *Re Barnett, Waring v Painter Stainers' Co* (1908) 24 TLR 788; *Re Peel's Release* [1921] 2 Ch 218; *Re Talbot, Jubb v Sheard* [1933] Ch 895; *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA; *Re Cooper's Conveyance Trusts, Crewdson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096; and see *Chamberlayne v Brockett* (1872) 8 Ch App 206 at 211 per Lord Selborne LC; *Worthing Corp'n v Heather* [1906] 2 Ch 532; *Re Davies, Lloyd v Cardigan County Council* [1915] 1 Ch 543; *Re Wightwick's Will Trusts, Official Trustees of Charitable Funds v Fielding-Ould* [1950] Ch 260, [1950] 1 All ER 689.

5 *Re Friends' Free School, Clibborn v O'Brien* [1909] 2 Ch 675; *Re Da Costa, Clarke v Church of England Collegiate School of St Peter* [1912] 1 Ch 337; and see *Re Beard's Trusts, Butlin v Harris* [1904] 1 Ch 270 (where on construction it was held that there had been no forfeiture under the gift over). It has been held that where a gift to a charity is conditional on the performance of acts (not relating to the subject matter of the gift) extending to a possibly remote period, the charity is not bound by the condition, and is entitled to a clean conveyance, free from the condition, unless there is a gift over to another charity: *Re Da Costa, Clarke v Church of England Collegiate School of St Peter*; *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA. As to the ordinary rule that gifts subject to a condition must be accepted with whatever disadvantage that condition may carry see *A-G v Christ's Hospital* (1790) 3 Bro CC 165; *A-G v Christ's Hospital* (1830) 1 Russ & M 626 at 628 per Leach MR. For an example of an alternative ultimate trust for charity see *Re Davey, Prisk v Mitchell* [1915] 1 Ch 837, CA.

6 *Re Randell, Randell v Dixon* (1888) 38 ChD 213. But see *Re Engels, National Provincial Bank Ltd v Mayer* [1943] 1 All ER 506. This accordingly depends on the application of the rule against perpetuities to possibilities of reverter and of resulting trusts: see PARA 141.

7 The Perpetuities and Accumulations Act 2009 comes into force as from a day to be appointed by statutory instrument: see s 22(2).

8 See the Perpetuities and Accumulations Act 2009 s 2(1) (not yet in force).

9 Perpetuities and Accumulations Act 2009 s 2(2) (not yet in force).

10 Perpetuities and Accumulations Act 2009 s 2(3) (not yet in force).

143. Limited gifts and undisposed interests.

The rule against perpetuities¹ is concerned only with the commencement of interests, not with their duration². Thus, where a sum of money was given to a school so long as it should continue endowed, it was held to be given only for that period, so that when the school ceased to be endowed the gift fell into residue³. Where property would fall into residue by operation of law, the interest disposed of having come to an end, an express direction that it should do so will not bring the case within the rule against perpetuities⁴. However, the interest which may arise by forfeiture on breach of a common law condition is subject to the rule⁵.

In relation to dispositions taking effect after 15 July 1964⁶, possibilities of reverter on the determinable estate in fee simple and possibilities of a resulting trust on the determination of any other determinable interest in property are subject to the rule against perpetuities as if they were rights of re-entry or similar rights arising on breach of a condition subsequent⁷. If the provision in that form would be void at common law, it is necessary to wait until it is established that the condition cannot be satisfied within the relevant perpetuity period⁸. If the provision falls to be treated as void for remoteness, the determinable interest becomes an absolute interest⁹. These statutory provisions apply not only to gifts expressed to last so long as some state of affairs persists¹⁰, but also to limited gifts for charitable purposes which subsequently fail¹¹.

1 See PARA 141.

2 *Re Chardon, Johnston v Davies* [1928] Ch 464.

3 *A-G v Pyle* (1738) 1 Atk 435, where, however, the rule against perpetuities was not mentioned.

4 *Re Randell, Randell v Dixon* (1888) 38 ChD 213; *Re Blunt's Trusts, Wigan v Clinch* [1904] 2 Ch 767; and see *Lyons Corp v Advocate-General of Bengal* (1876) 1 App Cas 91, PC; *Walsh v Secretary of State for India* (1863) 10 HL Cas 367. But see, contra, *Re Engels, National Provincial Bank Ltd v Mayer* [1943] 1 All ER 506.

5 *Re Trustees of Hollis' Hospital and Hague's Contract* [1899] 2 Ch 540; *Re Da Costa, Clarke v Church of England Collegiate School of St Peter* [1912] 1 Ch 337. See also *Hopper v Liverpool Corp* (1943) 88 Sol Jo 213.

6 See PARA 141 note 3.

7 See the Perpetuities and Accumulations Act 1964 s 12(1); and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1040.

8 See the Perpetuities and Accumulations Act 1964 s 3; PARA 141; and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARAS 1009, 1011.

9 See the Perpetuities and Accumulations Act 1964 s 12(1).

10 Eg *Re Chardon, Johnston v Davies* [1928] Ch 464.

11 Eg *Re Cooper's Conveyance Trusts, Crewdson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096. This type of gift is almost invariably accompanied by some express direction or condition relating to failure of the purpose. As to gifts of limited duration see PARA 172.

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144. Accumulations.

The statutory restriction on accumulations¹ is applicable to charitable funds which are directed to be accumulated beyond the time permitted by the statute². If an accumulation is directed of a fund the capital and income of which are given absolutely to a charity, the charity is entitled to stop the accumulation and demand immediate payment of the fund³.

As from a day to be appointed⁴ the following provisions apply to an instrument to the extent that it provides for property to be held on trust for charitable purposes⁵. If the instrument imposes or confers on the trustees a duty or power to accumulate income⁶ and, apart from these provisions the duty or power would last beyond the end of the statutory period⁷, it ceases to have effect at the end of that period unless the instrument provides for the duty or power to cease to have effect on the death of the settlor, or on the death of one of the settlors, determined by name or by the order of their deaths⁸. If a duty or power ceases to have effect under these provisions the income to which the duty or power would have applied apart from these provisions must go to the person who would have been entitled to it if there had been no duty or power to accumulate or be applied for the purposes for which it would have had to be applied if there had been no such duty or power⁹.

1 See the Law of Property Act 1925 s 164 (prospectively repealed); the Perpetuities and Accumulations Act 1964 s 13 (prospectively repealed); and **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1119 et seq.

2 *Martin v Maugham* (1844) 14 Sim 230; *Re Bradwell, Goode v Board of Trustees for Methodist Church Purposes* [1952] Ch 575, [1952] 2 All ER 286.

3 *Wharton v Masterman* [1895] AC 186, HL; *Re Travis, Frost v Greatorrex* [1900] 2 Ch 541, CA. The trust amounts to a directory provision of a kind which the trustees ought prima facie to bear in mind and carry out: *Re Knapp, Spreckley v A-G* [1929] 1 Ch 341 at 344 per Maugham J.

4 The Perpetuities and Accumulations Act 2009 comes into force as from a day to be appointed by statutory instrument: see s 22(2).

5 Perpetuities and Accumulations Act 2009 s 14(1) (not yet in force). However s 14 does not apply where the provision is made by a court or the Charity Commission for England and Wales: s 14(2) (not yet in force).

6 These provisions apply whether or not the duty or power to accumulate extends to income produced by the investment of income previously accumulated: Perpetuities and Accumulations Act 2009 s 14(7) (not yet in force).

7 The statutory period is a period of 21 years starting with the first day when the income must or may be accumulated (as the case may be): Perpetuities and Accumulations Act 2009 s 14(4) (not yet in force).

8 Perpetuities and Accumulations Act 2009 s 14(3), (5) (not yet in force).

9 Perpetuities and Accumulations Act 2009 s 14(6) (not yet in force).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/2. CREATION OF CHARITABLE TRUSTS/(7) FINALITY/145. Alteration of trusts.

(7) FINALITY

145. Alteration of trusts.

When a charitable trust has once been declared and established, the trusts cannot be varied or added to by the founder, whether an individual¹ or a body of subscribers², or by the trustees³, unless a valid power of appointment or revocation⁴ was reserved at the time the trusts were declared. In general, only the court or the Charity Commission⁵ or the Tribunal⁶ in the exercise of the jurisdiction to make cy-près schemes⁷ can alter charitable trusts once they are declared⁸.

Exceptionally, in respect of certain small charities, the charity trustees themselves have power, with the concurrence of the Charity Commission, to modify the trusts of the charity⁹.

1 *Re Hartshill Endowment* (1861) 30 Beav 130.

2 *A-G v Kell* (1840) 2 Beav 575; *A-G v Bovill* (1840) 1 Ph 762.

3 See *Cross v Lloyd-Greame* (1909) 102 LT 163; *Baldry v Feintuck* [1972] 2 All ER 81, [1972] 1 WLR 552. Note, however, the principle of *A-G v Mathieson*, *Re Wilkinson and Fell's Contract* [1907] 2 Ch 383, CA, that where funds are subscribed by the public for some charitable purpose and later the trustees declare the trusts on which the funds are held, that declaration of trust is binding unless and until rectified at the suit of the Attorney General: see PARA 105.

4 As to the validity of powers of revocation see PARAS 95, 136 note 17. See also *Re Holloway's Trusts*, *Greenwell v Ryan* (1909) 26 TLR 62 (express power to vary the trusts); *Re Harrison*, *Harrison v A-G* (1915) 85 LJCh 77; *Re Jewish Orphanage Endowment Trusts*, *Sebag-Montefiore v Rothschild Executor and Trustee Co* [1960] 1 All ER 764, [1960] 1 WLR 344 (power to modify contained in a scheme). Even if there is power to alter the trusts, it may be expressly or impliedly limited: *Baldry v Feintuck* [1972] 2 All ER 81, [1972] 1 WLR 552 (attempt to alter purposes of students' union of a university to permit application of funds partly for charitable purposes not connected with education and partly for non-charitable purposes).

5 See the Charities Act 1993 s 16; and PARA 187. As to the Charity Commission see PARAS 538-572.

6 See the Charities Act 1993 s 2A; and PARA 573. As to the Tribunal see PARA 573 et seq.

7 Alternatively, jurisdiction may be exercised under the Variation of Trusts Act 1958. Such cases can rarely arise, but in *Re Roberts' Settlement Trusts* [1961] TR 401, the court approved, on behalf of the settlor's future wives, an arrangement excluding the settlor and any wife of his from benefit under a charitable trust. As to the Variation of Trusts Act 1958 generally see **TRUSTS** vol 48 (2007 Reissue) PARA 1062 et seq.

8 See PARA 211. As to cy-près schemes generally see PARA 208 et seq. The duty of the court is to construe the trust instrument and carry out its charitable directions. If the conditions for cy-près application are not satisfied the court has no jurisdiction (apart from the Variation of Trusts Act 1958 (see note 7); and the Charities Act 1993 ss 74-74D (see the text and note 9) to alter the terms of the trust, no matter how beneficial such alterations may be: *Re Weir Hospital* [1910] 2 Ch 124, CA; *Oldham Borough Council v A-G* [1993] Ch 210, [1993] 2 All ER 432, CA.

9 See the Charities Act 1993 ss 74-74D; and PARAS 217-220.

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3. FAILURE OF STATED CHARITABLE OBJECTS

(1) FAILURE OF STATED OBJECTS GENERALLY

(i) Introduction

146. In general.

In many cases it is impossible to carry out the charitable objects specified by the donor. This impossibility may extend to only some of the provisions of the gift, or to the whole gift: for example, there may be gifts to a charitable institution which has either ceased to exist¹ or changed its nature², or gifts which are insufficient³ or more than sufficient⁴ to carry out the stated purposes.

In considering these cases the first problem is to ascertain what the objects of the gift are. Owing to the leniency with which the court treats charitable gifts, it does not follow that, because the actual objects stated in the instrument cannot strictly be carried out, the stated object has failed. For example, gifts to an unincorporated charitable association are normally construed as gifts for the purposes of that institution, and therefore the object of the gift does not necessarily fail if the institution itself ceases to exist: the object of the gift is the purpose, not the institution⁵.

Having ascertained the object of the gift, the next problem is to decide whether it has failed⁶. Again the court adopts a lenient view in deciding whether there has been a failure. Thus, a gift to a perpetually endowed charitable institution does not fail if the institution is dissolved, provided that some of its funds remain held on charitable trusts, which may not necessarily be the same trusts⁷.

Even when the object of the gift has been ascertained and it has been shown that the object has failed, the gift itself will not necessarily fail. In certain cases the gift can be applied cy-près for charitable purposes similar to those which have failed⁸. However, in cases of initial failure, a cy-près application can normally only be made where the donor has shown a general charitable intention⁹, since the justification for a cy-près application is that the court is giving effect to the presumed intention of the donor.

1 See PARA 150.

2 See PARAS 151-155.

3 See PARA 161.

4 See PARA 163.

5 See PARA 148.

6 See PARA 150. For a view of the law which equates this question with the question of the existence of a general charitable intention see PARA 166.

7 See PARA 150 et seq.

8 As to cy-près applications see generally PARA 208 et seq.

9 As to general charitable intention see PARA 166.

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(ii) Gifts to Charitable Institutions

A. IN GENERAL

147. Lapse of charitable gifts by will.

Problems on gifts to non-existent institutions have always arisen in relation to gifts by will. In such cases, under the general law, the gift will lapse if the legatee 'predeceases' the testator¹. Therefore two problems have to be considered: (1) was the object of the testator's bounty the institution itself, or rather the purposes it carried on; and (2) has either the institution itself ceased to exist or, if it be a purpose gift, the purpose ceased to be practicable² before the date of death.

- 1 As to the doctrine of lapse see **WILLS** vol 50 (2005 Reissue) PARA 450 et seq.
- 2 As to whether purposes are still practicable see PARA 149.

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B. WHERE THE INSTITUTION CEASED TO EXIST BEFORE THE GIFT TOOK EFFECT

(A) GIFTS FOR PURPOSES OR FOR THE INSTITUTION

148. Construction.

In principle, gifts to named charitable institutions must be construed in exactly the same way as gifts to non-charitable institutions or to individuals. However, because charitable institutions are established for some charitable purpose or purposes, it may be possible for the court to decide that on its true construction a particular gift is for the work carried on by the institution, and not simply for the institution itself. However, this will not save the gift if the purpose itself has ceased to exist¹.

The authorities establish that there is a distinction between incorporated and unincorporated bodies in this context². A gift to an incorporated body is not a gift upon trust for its purposes unless there is something in the context which shows that it is³; but a gift to an unincorporated association established for charitable purposes is a gift upon trust for those purposes unless there is something in the gift to show that the continued existence of the association is of the essence of the gift⁴.

Where the gift is not to the institution itself by its proper name but to, say, a 'home' or 'hospital', the conclusion that a purpose gift is intended is almost, if not absolutely, inescapable⁵. It has been held that the gift is a gift for purposes in some cases where the named institution has once existed but has ceased to exist before the gift takes effect⁶, or where the named institution was in fact merely an informal establishment carried on by the testatrix herself for charitable work⁷. In other cases, however, even where the gift was clearly intended for the benefit of the work carried on by the named institution, it has been held not to be a gift for purposes but solely a gift to the institution⁸. Again, a gift may be construed as one not to augment generally the endowment of a charity running, *inter alia*, a specified home, but exclusively for the benefit of patients at that home⁹. Where the existence of the institution itself is essential to the gift, the gift cannot be treated as a gift simply for its purposes¹⁰.

Where the institution has ceased to exist, but has been replaced by another carrying on the identical work and functions, the gift may be construed as a misdescription of the latter institution¹¹.

1 *Re Spence, Ogden v Shackleton* [1979] Ch 483, sub nom *Re Spence's Will Trusts, Ogden v Shackleton* [1978] 3 All ER 92; *Re Prescott* [1990] 2 IR 342.

2 *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050; *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n.

3 *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050; *Bowman v Secular Society Ltd* [1917] AC 406 at 442, HL, per Lord Finlay LC; *Re Cain, National Trustees Executors and Agency Co of Australasia Ltd v Jeffrey* [1950] VLR 382 at 389 per Dean J. For a case in which there was such an indication in the context see *Re Meyers, London Life Association v St George's Hospital* [1951] Ch 534, [1951] 1 All ER 538.

4 *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n; *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050. Some unincorporated associations are enabled by statute to hold property for purposes without the interposition of any trust, charitable or otherwise: see *Re Edis's Trusts, Campbell-Smith v Davies* [1972] 2 All ER 769, [1972] 1 WLR 1135.

5 *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286 at 296, [1971] 3 All ER 1050 at 1058 per Goff J.

6 *Re Souter, Brook v Talbot* (1907) Times, 24 January; *Re Withall, Withall v Cobb* [1932] 2 Ch 236; *Re Watt, Hicks v Hill* [1932] 2 Ch 243n, CA; *Re Morgan's Will Trusts, Lewarne v Minister of Health* [1950] Ch 637, [1950] 1 All ER 1097; *Re Glass, Public Trustee v South-West Middlesex Hospital Management Committee* [1950] Ch 643n, [1950] 2 All ER 953n; *Re Meyers, London Life Association v St George's Hospital* [1951] Ch 534, [1951] 1 All ER 538; *Re Hutchinson's Will Trusts, Gibbons v Nottingham Area No 1 Hospital Management Committee* [1953] Ch 387, [1953] 1 All ER 996; *Re Griffiths, Powell v Griffiths* (23 July 1958, unreported), cited in [1963] 1 All ER 680n; *Re Morrison, Wakefield v Falmouth* (1967) 111 Sol Jo 758; *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050.

7 *Re Webster, Pearson v Webster* [1912] 1 Ch 106.

8 *Re Goldney, Goldney v Queen Elizabeth Hospital for Children* (1946) 115 LJCh 337; *Re Pochin, Midland Bank Executor and Trustee Co v Godkin* [1948] Ch 182n.

9 *Re Spence, Ogden v Shackleton* [1979] Ch 483, sub nom *Re Spence's Will Trusts, Ogden v Shackleton* [1978] 3 All ER 92, distinguishing *Re Lucas, Sheard v Mellor* [1948] Ch 424, [1948] 2 All ER 22, CA.

10 See *Clark v Taylor* (1853) 1 Drew 642 (as explained in *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236, CA); *Langford v Gowland* (1862) 3 Giff 617; *Fisk v A-G* (1867) LR 4 Eq 521; *Makeown v Ardagh* (1876) IR 10 Eq 445; *Re Ovey, Broadbent v Barrow* (1885) 29 ChD 560; *Re Rymer, Rymer v Stanfield* [1895] 1 Ch 19, CA; *Re Brightwen, Shelly v Shelly* (1907) Times, 7 February; *Re Harwood, Coleman v Innes* [1936] Ch 285; *Re Stenson's Will Trusts, Carpenter v Treasury Solicitor* [1970] Ch 16, [1969] 2 All ER 517; and see the cases cited in note 8.

11 *Re Magrath, Histed v Queen's University of Belfast* [1913] 2 Ch 331; following *Coldwell v Holme* (1854) 2 Sm & G 31.

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149. Purposes still practicable.

If the gift is construed as a gift for purposes, it appears that the gift will not lapse, notwithstanding the disappearance of the institution itself, if the purposes of the former institution are still being carried on by some other body; the gift is applicable by way of a scheme for those purposes¹. It has been held that if the institution has ceased to exist and there is no longer any need to carry on its purposes, the purposes have ceased to exist and the object has failed².

1 See the cases cited in PARA 148 note 6.

2 *Re Slatter's Will Trusts, Turner v Turner* [1964] Ch 512, [1964] 2 All ER 469; *Re Spence, Ogden v Shackleton* [1979] Ch 483, sub nom *Re Spence's Will Trusts, Ogden v Shackleton* [1978] 3 All ER 92. The case of

an institution becoming redundant because its purposes have been fulfilled is one of failure through impracticability: see PARA 161 text to note 1.

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(B) TESTS FOR NON-EXISTENCE OF THE INSTITUTION

150. In general.

If the gift is construed as being to the institution itself, the question is whether that institution, as a charity, has ceased to exist. It may be still in existence even though its operations are diminished¹, and even if its continued existence is precarious², but not if it is merely nugatory³. The closure of one branch of a large charity does not affect the validity of a gift to the charity⁴ unless the gift can only be construed as a gift to that particular branch⁵. The non-existence of an institution which was intended to be a trustee for charitable purposes which can still be effected does not affect the validity of the gift⁶.

Apart from factual problems, there is a general rule that a perpetual charity endowed with funds can never cease to exist so long as it has endowments, however much its constitution may have been altered⁷. Particular instances are dealt with in the following paragraphs.

1 *Re Buck, Bruty v Mackey* [1896] 2 Ch 727; *Re Waring, Hayward v A-G* [1907] 1 Ch 166.

2 *Re Roberts, Stenton v Hardy* [1963] 1 All ER 674, [1963] 1 WLR 406.

3 *Re Meyers, London Life Association v St George's Hospital* [1951] Ch 534, [1951] 1 All ER 538; *Connell's Trustees v Milngavie District Nursing Association* 1953 SC 230, Ct of Sess.

4 *Re Bradfield, Bradfield v Hancock* (1892) 36 Sol Jo 646.

5 *Re Slatter's Will Trusts, Turner v Turner* [1964] Ch 512, [1964] 2 All ER 469.

6 *Marsh v A-G* (1860) 2 John & H 61. As to failure of or disclaimer by trustees see PARA 162.

7 *Re Faraker, Faraker v Durell* [1912] 2 Ch 488, CA; *Re Lucas, Sheard v Mellor* [1948] Ch 424, [1948] 2 All ER 22, CA; *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n.

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151. Alteration by scheme.

If, before the gift takes effect, a named charity has been consolidated with others under a scheme made by the Charity Commission¹, it is nevertheless still in existence and the gift is payable to the trustees of the consolidated funds². Similarly if, under a scheme for the administration of the assets of the named charity, a new charity is established elsewhere for similar purposes, the gift may be payable to the trustees of the new charity³.

- 1 As to the Charity Commission see PARAS 538-572. As to schemes see PARA 177 et seq.
- 2 *Re Faraker, Faraker v Durell* [1912] 2 Ch 488, CA.
- 3 *Re Lucas, Sheard v Mellor* [1948] Ch 424, [1948] 2 All ER 22, CA; and see *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n.

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152. Alteration of objects by the institution itself.

If a named charity, having power to do so, alters its name and objects so as to include further charitable objects before a gift to it takes effect, the gift is nevertheless payable to it under its new name¹.

- 1 *Re Bagshaw, Westminster Bank Ltd v Taylor* [1954] 1 All ER 227, [1954] 1 WLR 238.

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153. Dissolution of institution under power in its constitution.

Where a company established for charitable purposes is wound up¹, or an unincorporated association is dissolved under powers contained in its own constitution², it is no longer in existence, notwithstanding that its assets cannot be devoted to any purposes that are not charitable³. But where the assets and functions of a company had been transferred under the National Health Service Act 1946, a gift in augmentation of those assets was held to be payable to the body to which the assets had been transferred, despite the subsequent dissolution of the company before the death of the testator⁴.

- 1 *Re Stimson's Will Trusts, Carpenter v Treasury Solicitor* [1970] Ch 16, [1969] 2 All ER 517; followed in *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050.
- 2 *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050.
- 3 Such a company will not be restored to the register of companies under the Companies Act 2006 s 1029 (see **COMPANIES** vol 15 (2009) PARA 1535) in order to take a legacy on a death after the dissolution: *Re Servers of the Blind League* [1960] 2 All ER 298, [1960] 1 WLR 564 (decided under earlier legislation).
- 4 *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n.

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154. Alteration of objects and amalgamation under statute.

If an amalgamation or change of constitution is effected by or under a statute, the consequences may depend upon the construction of the statute¹. The fact that hospitals became nationalised under the National Health Service Act 1946 did not mean that they ceased to be charitable², nor did they cease to be eligible as objects of a gift divisible among hospitals which, in the trustees' opinion, were most in need of it³. Gifts to or for the benefit of voluntary hospitals which, before the testator's death, had become vested in the Minister of Health or in a specially constituted board of governors, were upheld as being for the purposes of the charitable work of the voluntary hospitals still being carried on by the nationalised hospitals⁴.

1 Cf *Re Donald, Moore v Somerset* [1909] 2 Ch 410.

2 *Re Dean's Will Trusts, Cowan v Board of Governors of St Mary's Hospital, Paddington* [1950] 1 All ER 882, 94 Sol Jo 239.

3 *Re Perreyman, National Provincial Bank Ltd v Perreyman* [1953] 1 All ER 223, 96 Sol Jo 851.

4 *Re Morgan's Will Trusts, Lewarne v Minister of Health* [1950] Ch 637, [1950] 1 All ER 1097; *Re Glass, Public Trustee v South-West Middlesex Hospital Management Committee* [1950] Ch 643n, [1950] 2 All ER 953n; *Re Frere, Kidd v Farnham Group Hospital Management Committee* [1951] Ch 27, [1950] 2 All ER 513; *Re Meyers, London Life Association v St George's Hospital* [1951] Ch 534, [1951] 1 All ER 538. See also PARA 148.

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155. Informal amalgamation.

Gifts to two named societies which, before the gifts took effect, merged with one another were held both to be payable to the united society¹. A gift to a society which amalgamated with another to which the testatrix later subscribed was held to be payable to the new society². Where a legacy is construed as being for the benefit of a particular charitable activity which, at the date of the will, is carried on by one organisation but, at the date of the testator's death, is carried on by another, the change of machinery does not affect the validity of the gift³. Similarly, a change in the constitution of a named institution does not affect the validity of a gift to it on trust for some special charitable purpose⁴.

1 *Re Joy, Purday v Johnson* (1888) 60 LT 175; cf *Re Wilson, Wardle v Lemon* (1909) 25 TLR 465 (legacy to fund formerly used for benefit of two villages, but before testator's death restricted to one of them, the other starting its own separate fund: legacy divided between the two funds in proportion to the population of the two villages).

2 *Re Pritt, Morton v National Church League* (1915) 85 LJCh 166.

3 *Re Wedgwood, Sweet v Cotton* [1914] 2 Ch 245. See also *Re Adams, Harle v Adams* (1888) 4 TLR 757; *Re Dawson's Will Trusts, National Provincial Bank Ltd v National Council of the YMCA Inc* [1957] 1 All ER 177, [1957] 1 WLR 391.

4 *Re Dean's Will Trusts, Cowan v Board of Governors of St Mary's Hospital, Paddington* [1950] 1 All ER 882, 94 Sol Jo 239; *Re White's Will Trusts, Tindall v Board of Governors of United Sheffield Hospitals* [1951] 1 All ER 528, 95 Sol Jo 205.

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C. OTHER CASES

156. Gift where institution never existed.

Where the named institution has never existed, the stated object has normally failed. The gift will, therefore, lapse unless there is a general charitable intention which enables it to be applied cy-près¹.

1 *Re Davis, Hannen v Hillyer* [1902] 1 Ch 876; and see PARA 168. In *Re Parkes, Cottrell v Parkes* (1909) 25 TLR 523, it was held in such a case that the donor's intention was to benefit certain purposes, rather than a particular institution: cf PARA 148. As to cy-près schemes see PARA 208 et seq.

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157. Gift where institution ceased to exist after gift took effect.

A legacy to an orphanage which was in existence at the date of the testator's death but which closed before the estate was distributed was held to have vested in the orphanage absolutely on the testator's death, and not to have been divested on the closure of the orphanage¹. The same principle was applied in the case of a reversionary legacy for a school which closed during the prior life interest².

A gift to a company established for charitable purposes from a person who dies after the company goes into liquidation but before it is formally dissolved need not fail according to its terms³.

1 *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236, CA; following *Hayter v Trego* (1830) 5 Russ 113. See also *Re Buck, Bruty v Mackey* [1896] 2 Ch 727; *Re Hunter, Lloyds Bank Ltd v Mistress and Governors of Girton College, Cambridge* [1951] Ch 190, [1951] 1 All ER 58.

2 *Re Soley, Grover v Drapers' Co* (1900) 17 TLR 118.

3 *Re ARMS (Multiple Sclerosis Research) Ltd, Alleyne v A-G* [1997] 2 All ER 679, [1997] 1 WLR 877 (where the property was in the event distributable among the creditors).

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158. Gift where institution unascertainable.

If a gift is made to a named institution whose identity cannot be ascertained, then, depending on the testator's apparent intention, the court may hold that a particular institution was intended to take but that it has not been shown to exist or to have existed¹, or that no particular institution was intended². In the latter case the gift is treated as a gift for the indicated charitable purposes. On the other hand, a particular institution may have been intended, but it may be impossible to decide which of various possible claimants is the one intended by the testator³. In such a case the principle applicable is that uncertainty of objects does not invalidate a gift that is clearly charitable⁴.

1 *Re Goldschmidt, Commercial Union Assurance Co Ltd v Central British Fund for Jewish Relief and Rehabilitation* [1957] 1 All ER 513, [1957] 1 WLR 524; cf *Re Tharp, Longrigg v People's Dispensary for Sick Animals of the Poor Inc* [1942] 2 All ER 358; revsd [1943] 1 All ER 257, CA, on the construction of the gift. As to gifts where the institution never existed see PARA 156.

2 *Simon v Barber* (1829) 3 Hare 195n.

3 See *Bennett v Hayter* (1839) 2 Beav 81; *Gibson v Coleman* (1868) 18 LT 236; *Re Alchin's Trust, ex p Furley, ex p Earl Romney* (1872) LR 14 Eq 230; *Re Songest, Mayger v Forces' Help Society and Lord Roberts' Workshops* [1956] 2 All ER 765, [1956] 1 WLR 897, CA (for the eventual outcome of this case see [1956] 3 All ER 489n, [1956] 1 WLR 1311, CA); *Re Satterthwaite's Will Trusts, Midland Bank Executor and Trustee Co Ltd v Royal Veterinary College* [1966] 1 All ER 919, [1966] 1 WLR 277, CA.

4 See PARA 89. The property will be applied by scheme, usually by division between some or all of the claimants likely to have been intended: see PARA 205.

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159. Disclaimer of gift.

A gift on trust cannot be invalidated by the trustee's refusal to accept the trusts¹ unless it is of the essence of the gift that the named trustee should act². Where a gift is to a charitable institution absolutely, however, and the institution disclaims, the gift may fail in the same way as would an absolute gift to an individual³.

1 See PARA 162.

2 See *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888.

3 See *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236 at 242, CA, per Kay LJ. In one case such a gift has been held not to fail: *Denyer v Druce* (1829) Tam 32; and see dicta in *Simon v Barber* (1829) 3 Hare 195n.

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(iii) Other Cases where Object Fails

160. Gift to be applied in illegal manner.

If the purpose of a gift is illegal or contrary to public policy, the gift cannot be charitable and will not be allowed to take effect¹. But if the purpose is charitable, and only the particular manner of effecting it is illegal, then the court will give effect to the gift despite the failure of the intended manner of application².

The same is true where income is directed to be accumulated for an excessive period and then to be applied for charitable purposes³: the direction to accumulate is treated as mere machinery, the failure of which cannot prevent the property from being devoted to charity⁴. Similarly, if a gift is initially valid, the fact that a subsequent statute makes it illegal to carry it out exactly as directed does not cause any part of the gift to lapse⁵.

If property is given for charitable purposes and the trustees have discretion to apply it in various ways, they may not apply it in an illegal manner, and the fact that the donor has purported to permit an illegal as well as a legal mode of application does not cause any kind of failure⁶.

1 *Thrupp v Collett* (1858) 26 Beav 125; *Sims v Quinlan* (1865) 17 I Ch R 43. As to purposes contrary to public policy see PARA 66.

2 *A-G v Vint* (1850) 3 De G & Sm 704. See also cases of gifts void as being for superstitious uses but nevertheless charitable, eg *De Costa v De Paz* (1754) 2 Swan 487n; *Cary v Abbot* (1802) 7 Ves 490. As to superstitious uses see PARA 63.

3 *Martin v Maugham* (1844) 14 Sim 230; followed reluctantly in *Re Bradwell*, *Goode v Board of Trustees for Methodist Church Purposes* [1952] Ch 575, [1952] 2 All ER 286; distinguished in *Re Lushington*, *Wynyard v A-G* [1963] NZLR 313; on appeal sub nom *Re Lushington*, *Manukau County v Wynyard* [1964] NZLR 161, NZ CA, where there was held to be no general charitable intention.

4 *Re Bradwell*, *Goode v Board of Trustees for Methodist Church Purposes* [1952] Ch 575, [1952] 2 All ER 286.

5 *A-G v Green* (1789) 2 Bro CC 492.

6 See eg *Sorresby v Hollins* (1740) 9 Mod Rep 221; *Faversham Corp v Ryder* (1854) 5 De GM & G 350; *Salisbury v Denton* (1857) 3 K & J 529; *Sinnett v Herbert* (1871) LR 12 Eq 201 (on appeal (1872) 7 Ch App 232).

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161. Impracticable gifts.

The purpose for which a charitable gift is made may fail because it has already been fulfilled¹, or because it is impossible to carry it out at all², as where the gift postulates the existence of an institution³ or a state of affairs⁴ or class of objects⁵ which does not exist or ceases to exist⁶. The purpose of a gift may also be impracticable because insufficient money has been given⁷, or because the property given and intended to be used is unsuitable⁸, or because no suitable site can be found⁹. The donor may have attached conditions to the gift which render it unlikely or impossible that the purposes can ever be achieved¹⁰, or conditions which are repugnant to the fulfilment of the primary charitable purpose so that, as it stands, the gift is self-defeating¹¹.

When the fund given is inadequate for the intended purpose at the date when it ought to be applied to that purpose according to the terms of the gift, it should not be retained and

accumulated until it is sufficient, but should be dealt with there and then¹². In some cases where inadequate funds were given the gift has been construed as conditional upon sufficient funds becoming available, so that if they do not become available the gift never takes effect at all¹³.

The intended purpose need not be immediately practicable¹⁴; the question is whether at the relevant date¹⁵ it is practicable to carry the donor's intentions into effect, or whether at that date there is any reasonable prospect that it will be practicable to do so at some future time¹⁶.

The burden of proof in relation to impracticability lies on the party who alleges that the gift has failed through impracticability¹⁷.

1 *Corbyn v French* (1799) 4 Ves 418; *Bunting v Marriott* (1854) 19 Beav 163.

2 See *A-G v Bishop of Oxford* (1785) 1 Bro CC 444n, discussed in *Corbyn v French* (1799) 4 Ves 418; *Re Welstead* (1858) 25 Beav 612; *A-G v Combe* (1679) 2 Cas in Ch 18; *Brantham v East Burgold* (circa 1790) cited 2 Ves 388; and cf *New v Bonaker* (1867) LR 4 Eq 655.

3 Eg a particular school: *Incorporated Society v Price* (1844) 1 Jo & Lat 498; *Re Templemoyle Agricultural School* (1869) IR 4 Eq 295; cf *Marsh v Means* (1857) 3 Jur NS 790 (for continuing publication of a certain periodical which was not published after the date of the will).

4 Eg that property given as a burial ground will continue to be available for the purpose (*Campbell v Liverpool Corp* (1870) LR 9 Eq 579; and cf *Re St Pancras Burial Ground* (1866) LR 3 Eq 173; *A-G v Glyn* (1841) 12 Sim 84); or that certain public services will continue to be available on a voluntary basis only (*Re Mackenzie, Moir v Angus County Council* [1962] 2 All ER 890, [1962] 1 WLR 880 (education); though see also *Re Leitch* [1965] VR 204, decided on a similar bequest; *Re Hillier, Hillier v A-G* [1954] 2 All ER 59, [1954] 1 WLR 700, CA (hospital buildings); *Re Wokingham Fire Brigade Trusts, Martin v Hawkins* [1951] Ch 373, [1951] 1 All ER 454 (local fire brigade); see also *Richmond Corp v A-G* [1965] RA 117; revsd sub nom *Re Richmond Parish Charity Lands* [1965] RA 343, CA (gift in aid of the poor rate)).

5 *A-G v London Corp* (1790) 1 Ves 243 (infidels in Virginia); *A-G v Hicks* (1810) 3 Bro CC 166n as noted in 29 ER 468 (leprous patients); *A-G v Ironmongers' Co* (1834) 2 My & K 576 (British slaves in Barbary); *A-G v Lawes* (1849) 8 Hare 32 (persecuted ministers of a particular sect); *A-G v Bunce* (1868) LR 6 Eq 563 (Presbyterians at Devizes); *Re Prison Charities* (1873) LR 16 Eq 129 (poor persons imprisoned for debt); *Re Geikie, Robson v Paterson* (1911) 27 TLR 484 (members of a particular church); *Re Welsh Hospital (Netley) Fund, Thomas v A-G* [1921] 1 Ch 655 (sick and wounded Welsh soldiers); *Re Colonial Bishops Fund 1841* [1935] Ch 148 (bishops in South Africa in connection with the Church of England). But see also *A-G v Earl of Craven* (1856) 21 Beav 392 (poor infected by plague).

6 However, a temporary absence of objects will not cause a failure, or even a temporary failure: *Aylet v Dodd* (1741) 2 Atk 238.

7 Eg *Cherry v Mott* (1836) 1 My & Cr 123; *Re Queen's School, Chester* [1910] 1 Ch 796; *Re Good's Will Trusts, Oliver v Batten* [1950] 2 All ER 653; *Re Whittaker, Nobel v A-G* [1951] 2 TLR 955; *Re Winton* (1953) Times, 31 January; *Re Dover's Battle of Britain Memorial Hospital Fund* (1955) Times, 29 June; *Re Ulverston and District New Hospital Building Trusts, Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622, [1956] 3 All ER 164, CA.

8 *Re Packe, Sanders v A-G* [1918] 1 Ch 437 (appeal settled sub nom *Re Packe, Campion v A-G* (1918) 145 LT Jo 111, CA); *A-G for New South Wales v Perpetual Trustee Co Ltd* (1940) 63 CLR 209, Aust HC; *Hay v Murdoch* [1952] WN 145, HL. See also *A-G v Earl of Lonsdale* (1827) 1 Sim 105 (land given inter vivos to charitable trustees by tenant for life; trusts impracticable after his death); and *McCormick v Queen's University of Belfast* [1958] NI 1.

9 *Chamberlayne v Brockett* (1872) 8 Ch App 206; *Re White's Trusts* (1886) 33 ChD 449; *Biscoe v Jackson* (1887) 35 ChD 460, CA.

10 *Re Wilson, Twentyman v Simpson* [1913] 1 Ch 314; *Re Mitchell's Will Trusts, Jago v A-G* (1966) 110 Sol Jo 291. Cf *A-G v Minshall* (1798) 4 Ves 11 (gift to apprentice poor children, with a maximum of £10 for each child which became impracticably small); *Re Stewart's Will Trusts* [1983] NI 283.

11 *Re Richardson's Will* (1887) 58 LT 45; *Re Robinson, Wright v Tugwell* [1923] 2 Ch 332 (condition that preacher wear black gown in pulpit, which would alienate congregation); *Re Dominion Students' Hall Trust, Dominion Students' Hall Trust v A-G* [1947] Ch 183 (colour bar condition incompatible with primary object of promoting community among all members of Commonwealth); *Re Lysaght, Hill v Royal College of Surgeons*

[1966] Ch 191, [1965] 2 All ER 888 (condition excluding Catholics and Jews; the trustee, essential to the gift, would not accept the gift subject to the condition); cf *Re Meres' Will Trusts* (1957) Times, 4 May (condition that only males of pure English, Irish or Scottish parentage be eligible to benefit: void for uncertainty, but the main gift held valid); *Harris v Sharp* (7 December 1987, unreported), ChD, discussed [1988] Conv (NS) 288 (D Partington).

12 *Re Whittaker, Nobel v A-G* [1951] 2 TLR 955.

13 Eg see *Re London University Medical Sciences Institute Fund, Fowler v A-G* [1909] 2 Ch 1, CA; and PARA 173.

14 See *A-G v Bishop of Chester* (1785) 1 Bro CC 444; *Re Villers-Wilkes, Bower v Goodman* (1895) 11 TLR 250; *Chamberlayne v Brockett* (1872) 8 Ch App 206; *Biscoe v Jackson* (1887) 35 ChD 460, CA; *Sinnett v Herbert* (1872) 7 Ch App 232; *A-G v Lady Downing* (1767) Wilm 1; *A-G v Bowyer* (1798) 3 Ves 714 at 728 per Lord Hardwicke LC; *Re Swain, Monckton v Hands* [1905] 1 Ch 669, CA.

15 In the case of a will, the date of the testator's death; and in the case of an inter vivos gift, the date of the gift: *Re Moon's Will Trusts, Foale v Gillians* [1948] 1 All ER 300; *Re Wright, Blizzard v Lockhart* [1954] Ch 347, [1954] 2 All ER 98, CA; and see PARA 165.

16 See the inquiry directed in *Re White's Will Trusts, Barrow v Gillard* [1955] Ch 188, [1954] 2 All ER 620.

17 *Re Tacon, Public Trustee v Tacon* [1958] Ch 447 at 454, [1958] 1 All ER 163 at 164, CA, per Lord Evershed MR.

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162. Failure of or disclaimer by trustee.

Following the general rule that equity does not want for a trustee, the fact that the intended trustee of a gift for charitable purposes¹, or a person to whom a power of selection is given², dies before the testator does not generally cause a failure of the gift, for the identity of the trustee is normally regarded as mere machinery³, and in the exercise of its general jurisdiction over the administration of trusts the court can always remedy failures of machinery⁴.

The same is true if an executor is given a power of selection but the appointment is later revoked⁵. If substantially the whole of a small estate is given on trust for a charitable institution and there is no executor who proves, letters of administration with the will annexed may properly be granted to an officer of the institution⁶.

Similarly, the refusal of the intended trustee to accept the gift⁷ does not constitute a failure of the gift unless it is of the essence of the gift that the intended trustee should act⁸, or unless the gift is impracticable if the intended trustee does not act⁹. Again, the gift will not fail if the intended trustee is incapable in law of accepting the trust¹⁰, or if there is no person able to give a good receipt for the gift¹¹.

A gift upon trust will not normally fail by reason of the default or neglect of the trustees¹², but this principle cannot be applied when that default or neglect is the condition upon which a gift over is expressed to operate¹³.

1 *Moggridge v Thackwell* (1792) 1 Ves 464 per Lord Thurlow; reheard by Lord Eldon (1803) 7 Ves 36; affd (1807) 13 Ves 416, HL; *A-G v Hickman* (1732) 2 Eq Cas Abr 193 pl 14; *A-G v Lady Downing* (1767) Wilm 1; *A-G v Gladstone* (1842) 13 Sim 7; *A-G v Sturge* (1854) 19 Beav 597.

2 *Re Willis, Shaw v Willis* [1921] 1 Ch 44, CA; *A-G v Hickman* (1732) 2 Eq Cas Abr 193 pl 14.

3 See eg *Re Morrison, Wakefield v Falmouth* (1967) 111 Sol Jo 758; but for an exceptional case see *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888.

4 If necessary a scheme will be directed for the administration of the trusts. As to administrative schemes see PARA 178.

5 *White v White* (1778) 1 Bro CC 12.

6 *Re M'Auliffe's Goods* [1895] P 290; followed in *Re Lalor's Goods* (1901) 85 LT 643. See also *Walsh v Gladstone* (1843) 1 Ph 290 (legacy to person who predeceased testator 'to be applied to the use of' a named college: held, on the evidence, that it would be proper to pay the legacy over to the president of the college).

7 *Doyley v A-G* (1735) 4 Vin Abr 485 pl 16; *A-G v Andrew* (1798) 3 Ves 633 (affd sub nom *Andrew v Master and Wardens of the Merchant Taylors' Co* (1800) 7 Ves 223, HL); *Denyer v Druce* (1829) Taml 32; *A-G v Fletcher* (1835) 5 LJCh 75; *Reeve v A-G* (1843) 3 Hare 191; *Barclay v Maskelyne* (1858) 32 LTOS 205; *Re Burley, Alexander v Burley* [1910] 1 Ch 215; *Re Wilson-Barkworth, Burstall v Deck* (1933) 50 TLR 82; *Re Lawton, Gartside v A-G* [1936] 3 All ER 378.

8 *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888; and cf *Marquess of Bute's Trustees v Marquess of Bute* (1905) 7 F 49, Ct of Sess.

9 *New v Bonaker* (1867) LR 4 Eq 655 (gift to the President and Vice-President of the United States and the Governor of Pennsylvania).

10 *Re Hampton, Public Trustee v Hampton* (1918) 88 LJCh 103 (the Public Trustee cannot act as trustee of any charitable trust); *Tufnell v Constable* (1838) 7 Ad & El 798 (churchwardens); *Re Woolnough's Will Trusts* (1959) Times, 22 October; *Re Armitage, Ellam v Norwich Corp'n* [1972] Ch 438, [1972] 1 All ER 708 (local authorities). Formerly gifts to corporations were sometimes void under the mortmain laws (repealed: see PARAS 82-83); but gifts to corporations on trust were sometimes upheld as to the trust, though the corporation could not act as a trustee: see *Sonley v Clock-makers' Co* (1780) 1 Bro CC 81 (private trust); *Incorporated Society in Dublin v Richards* (1841) 1 Dr & War 258. But there were conflicting decisions: see eg *A-G v Flood* (1816) Hayes & Jo App xxi; affd (1817) Hayes 611.

11 *Re Meyers, London Life Association v St George's Hospital* [1951] Ch 534, [1951] 1 All ER 538.

12 *A-G v Boulton* (1794) 2 Ves 380; affd (1796) 3 Ves 220. This applies even if there is a gift over: *Re Parish of Upton Warren* (1833) 1 My & K 410; and see *A-G v Leigh* (1721) 3 P Wms 145n.

13 *Christ's Hospital v Grainger* (1849) 1 Mac & G 460; *Re Hanbey's Will Trusts, Cutlers' Co v President and Governors of Christ's Hospital, London* [1956] Ch 264, [1955] 3 All ER 874.

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163. Gift of more than is needed for purpose.

If a gift for a specific purpose is of an amount of capital more than is required or appropriate for the purpose, then, as to the surplus, the donor has failed to devote his gift to a specified charitable purpose which can be carried out, and in that sense there is a failure of objects¹. The same applies to gifts in response to public appeals, where the total sum subscribed is more than can be used for the specified purpose². The question may also arise where the income of a fund subject to a continuing trust for charity is, from the start, greater than is necessary for the specified purpose³, or becomes so in the course of time by reason of an increase in the income⁴ or the decay of the particular charity named⁵.

1 *Re Connolly, Walton v Connolly* (1914) 110 LT 688, CA; *Re King, Kerr v Bradley* [1923] 1 Ch 243; *Re Stanford, Cambridge University v A-G* [1924] 1 Ch 73; *Re Monk, Giffen v Wedd* [1927] 2 Ch 197, CA; *Re Royce, Turner v Wormald* [1940] Ch 514, [1940] 2 All ER 291; *Re Raine, Walton v A-G* [1956] Ch 417, [1956] 1 All ER 355. As to whether the surplus is held on resulting trust or is applicable cy-près see PARA 170.

2 Eg *Re North Devon and West Somerset Relief Fund Trusts, Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260. For cases where the sum raised is too small to be used for the specified purpose see PARA 161 text and note 7.

3 Eg *Arnold v A-G* (1698) Show Parl Cas 22, HL.

4 *A-G v Coopers' Co* (1812) 19 Ves 187.

5 *A-G v Ironmongers' Co* (1834) 2 My & K 576; *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236 at 240, CA, per Kay LJ. As to surplus income see PARAS 130-134.

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(2) CONSEQUENCES OF FAILURE OF STATED OBJECTS

(i) In general

164. Failure of gift or application cy-près.

If it is established that the stated objects of a charitable gift fail, there are two possible consequences: either the property can be applied cy-près¹ for such charitable purposes as the court or the Charity Commission considers appropriate having regard to the statutory considerations², or the whole gift fails. In general, no cy-près application is possible unless the donor has shown a general charitable intention³, but there are three exceptions to this requirement: (1) where the gift has taken effect but has failed subsequently⁴; (2) where the amount of the gift is, from the outset, surplus to what is required to achieve the stated object, but the donor has shown an intention to devote the property wholly to charity⁵; and (3) in the case of public subscriptions⁶. In all such cases of cy-près application, the application is made by way of scheme⁷. If no cy-près application is possible, the gift fails and will result to the donor.

1 As the cy-près doctrine see PARA 208 et seq.

2 See the Charities Act 1993 s 14B(1)-(3); and PARA 210. As to the statutory considerations see PARA 213; as to the Charity Commission see PARAS 538-572.

3 See PARA 166.

4 As to subsequent failure see PARAS 171-172.

5 See PARA 170.

6 Ie by virtue, in part, of the Charities Act 1993 ss 14, 14A: see PARAS 174-175. As to the failure of public appeals for charitable purposes see PARA 173 et seq.

7 As to the making of cy-près schemes see PARA 208 et seq.

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(ii) Initial Failure

165. When ascertained.

For the purpose of deciding whether a charitable gift can take effect in the first place, the situation must be considered as at the date when the gift first vests in interest in charity, whether in possession¹ or in reversion², and whether the gift is to an institution or for a purpose³. If the reversionary gift is defeasible, the possibility that it will be divested is to be ignored⁴; the question must be decided by reference to the value of the whole fund at the relevant date, not the value at that date of the reversionary interest⁵.

1 *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236, CA.

2 *Re Moon's Will Trusts, Foale v Gillians* [1948] 1 All ER 300; *Re Wright, Blizzard v Lockhart* [1954] Ch 347, [1954] 2 All ER 98, CA; *Re Woodhams, Lloyds Bank Ltd v London College of Music* [1981] 1 All ER 202, [1981] 1 WLR 493.

3 *Re Wright, Blizzard v Lockhart* [1954] Ch 347, [1954] 2 All ER 98, CA. See *Harris v Sharp* (7 December 1987, unreported), ChD, discussed [1988] Conv (NS) 288 (D Partington).

4 *Re Tacon, Public Trustee v Tacon* [1958] Ch 447, [1958] 1 All ER 163, CA: the position in relation to a true contingent gift is undecided.

5 *Re Tacon, Public Trustee v Tacon* [1958] Ch 447, [1958] 1 All ER 163, CA. See *Re Martin* (1977) 121 Sol Jo 828 (inflation taken into account, applying *Re Tacon*). See also the form of inquiry directed in *Re White's Will Trusts, Barrow v Gillard* [1955] Ch 188, [1954] 2 All ER 620.

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166. General charitable intention.

A gift will not lapse if, although the indicated purpose of the gift has failed at the moment when the gift should take effect, the court can find an intention on the donor's part more general than a bare intention that the impracticable direction be carried into execution as an indispensable part of the trust declared¹. 'General charitable intention' means a paramount intention to give the property in the first instance for a general charitable purpose rather than a particular charitable purpose and to graft on to the general gift a direction as to the donor's intentions as to the manner in which the general gift is to be carried into effect². The general charitable purpose may be directed to a particular form of charity rather than to charity generally³.

The process of ascertaining whether there is a general charitable intention may involve considering whether one or more of the directions given by the donor were essential to his intended purpose⁴, and this may be decided by construing the gift⁵. Often, however, the words used give little assistance, and more is to be gained from an examination of the nature of the charitable trust itself and what is involved in the project⁶. The fact that a donor refers expressly to his general charitable intention cannot give to the gift a general charitable character when, on the face of it, it is particular and non-charitable⁷. It has been held that the court cannot find a general charitable intention in relation to a gift which is for a non-charitable purpose⁸; and it cannot construct a general charitable intention from mere guesswork⁹.

The meaning of 'general charitable intention' has more recently been restated in terms of paramount charitable intention¹⁰. Under this restatement, the question whether the specified objects have failed and the question of the presence of a general charitable intention are

merged into one question, namely whether the impossibility of performing part of the expressed trusts defeats the essential charitable purpose of the donor, or whether this essential purpose can be carried out in a modified way. If the essential purpose of the gift can still be carried out in a modified way, the general or paramount charitable intention takes effect and the court can give effect to it by means of a cy-près scheme¹¹.

1 For this formulation of the meaning of a general charitable intention see *A-G for New South Wales v Perpetual Trustee Co Ltd* (1940) 63 CLR 209 at 225, Aust HC, per Dixon and Evatt JJ.

2 *Re Wilson, Twentyman v Simpson* [1913] 1 Ch 314 at 320-321 per Parker J (the locus classicus on the point). See also *Re Templemoyle Agricultural School* (1869) IR 4 Eq 295 at 301 per Chatterton V-C.

3 See *Re Taylor, Martin v Freeman* (1888) 58 LT 538 at 542 per Kay J.

4 See *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888, where the gift contained two incompatible directions: the Royal College of Surgeons was to act as trustee but refused to do so if the gift remained subject to a condition relating to religious discrimination. It was held that the trusteeship of the college was essential to the gift, and that the condition as to religious discrimination was not.

5 *A-G for New South Wales v Perpetual Trustee Co Ltd* (1940) 63 CLR 209 at 227, Aust HC, and see at 225-228 generally.

6 *A-G for New South Wales v Perpetual Trustee Co Ltd* (1940) 63 CLR 209 at 227, Aust HC. See also *Re Broadbent (deceased); Imperial Cancer Research Fund v Bradley* [2001] EWCA Civ 714, (2001) 3 ITELR 787.

7 *Re Sanders' Will Trusts, Public Trustee v McLaren* [1954] Ch 265, [1954] 1 All ER 667 (appeal settled (1954) Times, 22 July, CA).

8 *Re Jenkins' Will Trusts, Public Trustee v British Union for the Abolition of Vivisection* [1966] Ch 249, [1966] 1 All ER 926. Cf *Re Satterthwaite's Will Trusts, Midland Bank Executor and Trustee Co Ltd v Royal Veterinary College* [1966] 1 All ER 919, [1966] 1 WLR 277, CA.

9 *Re Crowe, National Westminster Bank Ltd v Balfour* (1979, unreported); noted in *Report of the Charity Commissioners for England and Wales for 1979* (HC Paper (1979-80) no 608) paras 40-45.

10 *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888.

11 As to cy-près schemes see PARA 208 et seq.

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167. Examples of general charitable intention.

A general charitable intention has been found where a deed contained alternative gifts, all related to one general purpose¹, and where a legacy was one of nine to institutions concerned with animal welfare², and where the bulk of an estate after a life interest was specifically dedicated to charity and the particular institution which had ceased to exist was mainly only a co-ordinating body³. Where residue is divided between charitable purposes or institutions and the gift of one share fails as to its stated objects, it may be relatively easy to find a general charitable intention⁴. There is no rule that, where a legacy to charity fails and residue is also given to charity, there can be no general charitable intention in relation to the legacy⁵. In most cases the question of whether there is or is not a general charitable intention depends upon the construction of the particular will, and no general principle can be derived from them⁶.

Sometimes where the failure is caused by the donor's attaching some impracticable condition to his gift, the condition is held to be an inessential part of the gift and the donor's general

charitable intention to be directed towards only the essential elements in the gift⁷. Similarly, when the precise direction, as distinct from the general purpose, is illegal, it may be regarded as inessential⁸.

A general charitable intention may be manifested not only in a gift by deed or will, but also in a gift in response to a public appeal⁹, but these cases are more often approached on the basis of an intention to make an outright, or only a limited, gift of property to charity, whether or not the purpose of the appeal can be effected¹⁰.

Very slight indications of a general charitable intention will suffice where there is a gift to an institution, apparently charitable¹¹, which has never existed¹². It is difficult¹³, though not impossible¹⁴, to find a general charitable intention where there is a gift to a particular institution which ceased to exist before the gift took effect, and a parallel principle applies where a particular purpose has become impracticable or impossible of accomplishment before the gift took effect¹⁵.

1 *Re Templemoyle Agricultural School* (1869) IR 4 Eq 295. See also *Re Tyler's Fund Trusts*, *Graves v King* [1967] 3 All ER 389, [1967] 1 WLR 1269 (gift by deed for charitable institutions to be named in a later document).

2 *Re Satterthwaite's Will Trusts*, *Midland Bank Executor and Trustee Co Ltd v Royal Veterinary College* [1966] 1 All ER 919, [1966] 1 WLR 277, CA. Cf *Re Jenkins' Will Trusts*, *Public Trustee v British Union for the Abolition of Vivisection* [1966] Ch 249, [1966] 1 All ER 926.

3 *Re Finger's Will Trusts*, *Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050.

4 *Re Whittaker*, *Nobel v A-G* [1951] 2 TLR 955; *Re Griffiths*, *Powell v Griffiths* (23 July 1958, unreported) cited in [1963] 1 All ER 680n.

5 *Lyons Corp v Advocate-General of Bengal* (1876) 1 App Cas 91, PC; and see PARA 169 text and note 8.

6 See eg *Biscoe v Jackson* (1887) 35 ChD 460, CA (gift to establish cottage hospital and soup kitchen: general charitable intention of benefiting poor of parish); *Re Winton* (1953) Times, 31 January (gift for building humane slaughterhouse for horses: held not limited to that specific purpose); *Re Currie* [1985] NI 299.

7 *Re Lysaght*, *Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888, cited in PARA 166 note 4; *A-G for New South Wales v Perpetual Trustee Co Ltd* (1940) 63 CLR 209, Aust HC; *Re Bloomfield's Bequest* (1920) 54 ILT 213; *Re Robinson*, *Wright v Tugwell* [1923] 2 Ch 332; *Brantham v East Burgold* (circa 1790) cited 2 Ves 388; *Re Woodhams*, *Lloyds Bank Ltd v London College of Music* [1981] 1 All ER 202, [1981] 1 WLR 493 (music college refused to accept gift for scholarships restricted to orphans; restriction inessential part of gift and general charitable intention prevailed).

8 *A-G v Vint* (1850) 3 De G & Sm 704. As to where gifts are to be applied in an illegal manner see PARA 160.

9 Eg *Re North Devon and West Somerset Relief Fund Trusts*, *Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260.

10 As to the failure of gifts in relation to general or limited charitable purposes see PARA 174. Since the Charities Act 1960 s 14 (repealed; see now the Charities Act 1993 s 14) the question has become less important: see PARAS 173-176.

11 Its description or the context may show that it would have been charitable: *Re Maguire* (1870) LR 9 Eq 632; *Re Clergy Society* (1856) 2 K & J 615; *Re Knox*, *Fleming v Carmichael* [1937] Ch 109, [1936] 3 All ER 623.

12 *Re Davis*, *Hannen v Hillyer* [1902] 1 Ch 876. See also *Re Bailey*, *Bailey v Working Ladies' Guild* (1931) 75 Sol Jo 415 (no indication of more general intention from context, but gift applied cy-près); *Re Barnard*, *Majendie v Duke of Northumberland* (1890) 7 TLR 73.

13 *Re Harwood*, *Coleman v Innes* [1936] Ch 285. See also *Re Hunter*, *Genn v A-G of British Columbia* [1973] 3 WWR 197 (BC SC).

14 *Re Finger's Will Trusts*, *Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050.

15 *Re Spence*, *Ogden v Shackleton* [1979] Ch 483, sub nom *Re Spence's Will Trusts*, *Ogden v Shackleton* [1978] 3 All ER 92.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/3. FAILURE OF STATED CHARITABLE OBJECTS/(2) CONSEQUENCES OF FAILURE OF STATED OBJECTS/(ii) Initial Failure/168. Effect of general charitable intention.

168. Effect of general charitable intention.

If a general charitable intention¹ is found, failure of the particular directions in the gift will not cause the gift itself to fail, for the donor's true intention may still be carried out, and where necessary a scheme will be directed² or the property applied by the Attorney General, to whom the power of the Crown to dispose of charitable gifts under the sign manual has been delegated³.

If a gift to a non-existent institution is saved by the presence of a general charitable intention, the person or authority administering the purposes of the gift under a scheme may be entitled to a share of residue divisible between institutions which are beneficiaries under the instrument⁴.

- 1 As to general charitable intention see PARAS 166-167.
- 2 As to cy-près schemes see PARA 208 et seq.
- 3 As to the jurisdiction of the Crown over charities see PARAS 508-509.
- 4 *Re Davis, Hannen v Hillyer* [1902] 1 Ch 876.

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169. Intention to benefit particular charity only.

In other cases it has been held that every element in the gift was essential to the donor's intention and that, if the particular directions fail, an application of the property in any other way would be contrary to the donor's intention¹. Frequently an intention to benefit charity only in a particular form appears from the fact that the donor has laid down detailed directions or conditions², or has expressly made the conditions of the essence of the gift³.

In the case of a legacy to a correctly named, known institution which ceased to exist before the date of the testator's death, it may be difficult to find a general charitable intention⁴, the more so if the gift is expressed to be 'for the benefit of that institution'⁵, or if the testator placed particular reliance on the institution named carrying out his wishes⁶. A gift to an institution which has never existed may be held to be limited in intention to the supposed institution, and to lapse in consequence⁷.

It has been said that, where residue is given to charity, it is difficult to find a general charitable intention in relation to a legacy whose objects fail⁸. If a legacy which is only for a particular charitable purpose fails at the moment of the testator's death, it falls into residue or passes as on an intestacy.

When gifts of realty for charitable purposes were void under the mortmain laws⁹, ancillary gifts of personalty were held to fail also, as being dependent on the validity of the gift of realty¹⁰,

unless they could be construed as being for an independent purpose, whether private¹¹ or charitable¹².

1 *A-G v Bishop of Oxford* (1786) 1 Bro CC 444n, as explained in *Corbyn v French* (1799) 4 Ves 418.

2 *Re Wilson, Twentyman v Simpson* [1913] 1 Ch 314; *Russell v Kellett* (1855) 3 Sm & G 264; *Re Good's Will Trusts, Oliver v Batten* [1950] 2 All ER 653; *Hay v Murdoch* [1952] WN 145, HL.

3 Eg by a direction that if they are not fulfilled the gift is to fall into residue: *Re Randell, Randell v Dixon* (1888) 38 ChD 213. See also *Re Cooper's Conveyance Trusts, Crewdson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096; *Re Peel's Release* [1921] 2 Ch 218; and PARA 172.

4 *Re Harwood, Coleman v Innes* [1936] Ch 285; *Re Rymer, Rymer v Stanfield* [1895] 1 Ch 19, CA; but see *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050, citing *Re Roberts, Stenton v Hardy* [1963] 1 All ER 674 at 681, [1963] 1 WLR 406 at 416 per Wilberforce J.

5 *Langford v Gowland* (1862) 3 Giff 617. See also *Re Spence, Ogden v Shackleton* [1979] Ch 483, sub nom *Re Spence's Will Trusts, Ogden v Shackleton* [1978] 3 All ER 92 (gift to defunct old people's home expressed with particularity showed no general charitable intention).

6 *Re Stenson's Will Trusts, Carpenter v Treasury Solicitor* [1970] Ch 16, [1969] 2 All ER 517. For other cases in which gifts to charitable institutions which had ceased to exist were held not to show a general charitable intention see *Clark v Taylor* (1853) 1 Drew 642; *Re Ovey, Broadbent v Barrow* (1885) 29 ChD 560.

7 See *Re Tharp, Longrigg v People's Dispensary for Sick Animals of the Poor Inc* [1942] 2 All ER 358; revsd [1943] 1 All ER 257, CA, on the ground that the named institution was a misdescription of an existing body.

8 *Re Goldschmidt, Commercial Union Assurance Co Ltd v Central British Fund for Jewish Relief and Rehabilitation* [1957] 1 All ER 513, [1957] 1 WLR 524; but see *Lyons Corp v Advocate-General of Bengal* (1876) 1 App Cas 91, PC; and PARA 167 note 5.

9 As to the repeal of the mortmain laws see PARAS 82-83.

10 See eg *A-G v Whitchurch* (1796) 3 Ves 141; *A-G v Hinxman* (1820) 2 Jac & W 270; *Re Taylor, Martin v Freeman* (1888) 58 LT 538.

11 *Blandford v Thackerell* (1793) 2 Ves 238.

12 *A-G v Stepney* (1804) 10 Ves 22.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/3. FAILURE OF STATED CHARITABLE OBJECTS/(2) CONSEQUENCES OF FAILURE OF STATED OBJECTS/(ii) Initial Failure/170. Surplus: intention to devote whole to charity.

170. Surplus: intention to devote whole to charity.

In a number of cases where the property given is more than is needed for the specified charitable purpose, it has been held that the gift is a valid charitable gift as to the whole, and that the surplus should be applied cy-près¹, sometimes on the basis that there was a general charitable intention². In other cases this result has been achieved on the basis that the donor intended to devote to charity the whole of the property given³. However, if the donor's intention was to limit his gift to the amount necessary for the particular purpose named, any surplus is held on a resulting trust, or falls into residue, or passes as on an intestacy, as the case may be⁴.

1 As to cy-près schemes see PARA 208 et seq.

2 *Re Royce, Turner v Wormald* [1940] Ch 514, [1940] 2 All ER 291. As to general charitable intention see PARA 167 et seq.

3 *Re Douglas, Douglas v Simpson* [1905] 1 Ch 279; *Re King, Kerr v Bradley* [1923] 1 Ch 243; *Re Monk, Giffen v Wedd* [1927] 2 Ch 197, CA (where the principle applied was explained by Sargant LJ at 211 as an application of the rule in *Lassence v Tierney* (1849) 1 Mac & G 551, on the basis of an absolute gift of the whole to trustees for charity, followed by a specific direction as to the application of part only of the property); *Re Robertson, Colin v Chamberlin* [1930] 2 Ch 71; *Re Raine, Walton v A-G* [1956] Ch 417, [1956] 1 All ER 355 (where there was held to be no general charitable intention but nevertheless an intention to give the property outright to charity, and the property did not pass as on an intestacy). Each of these cases concerned a gift of residue. See also cases on surplus income (see PARAS 130-134); and cases on outright gifts in relation to subsequent failure (see PARA 171).

4 *Re Stanford, Cambridge University v A-G* [1924] 1 Ch 73.

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(iii) Subsequent Failure

171. Outright gift.

A donor may give the whole interest in the property to charity or only an interest of limited duration¹. Whether or not the gift is outright is a matter of construction². If it is shown that the donor intended to part with his whole interest in the property, and therefore to make an outright gift, the question of general charitable intention is irrelevant³. A charity once established does not die and its property, being irrevocably devoted to charity, is applied for other charitable purposes⁴. Thus property given outright by will or inter vivos⁵ to a charitable institution⁶ or for charitable purposes⁷ which vests effectively in charity does not fall into residue if, later, the institution closes⁸ or the purposes become impracticable⁹.

1 As to gifts of limited duration see PARA 172.

2 See also PARA 172 note 2.

3 *Re Wokingham Fire Brigade Trusts, Martin v Hawkins* [1951] Ch 373, [1951] 1 All ER 454 (approved in *Re Ulverston and District New Hospital Building Trusts, Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622, [1956] 3 All ER 164, CA); *Re British School of Egyptian Archaeology, Murray v Public Trustee* [1954] 1 All ER 887, [1954] 1 WLR 546. See also *Campbell v Liverpool Corp* (1870) LR 9 Eq 579; *Re St Pancras Burial Ground* (1866) LR 3 Eq 173; *Wallis v Solicitor-General for New Zealand* [1903] AC 173, PC. The same is true in Scots law: *Anderson's Trustees v Scott* 1914 SC 942, Ct of Sess; *Davidson's Trustees v Arnott* 1951 SC 42, Ct of Sess. In some cases of subsequent failure, the court has considered the question of general charitable intention (*Re Welsh Hospital (Netley) Fund, Thomas v A-G* [1921] 1 Ch 655; *Re North Devon and West Somerset Relief Fund Trusts, Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260; *Re British School of Egyptian Archaeology, Murray v Public Trustee* above, although as to this, see *Re Ulverston and District New Hospital Building Trusts* above), but there seem to be no cases of gifts by will in which this has been considered relevant, apart from the special category of cases on capital surplus (see *Re Monk, Giffen v Wedd* [1927] 2 Ch 197, CA; and PARA 170). There are possibly ambiguous observations in *Re Cunningham, Dulcken v Cunningham* [1914] 1 Ch 427; *Incorporated Society v Price* (1844) 1 Jo & Lat 498; *Lyons Corp v Advocate-General of Bengal* (1876) 1 App Cas 91, PC, although see the same case at 111 per Sir Montague E Smith ('an absolute charitable gift, capable of being applied cy-près').

4 Cf *National Anti-Vivisection Society v IRC* [1948] AC 31 at 74, [1947] 2 All ER 217 at 238, HL, per Lord Simonds.

5 In theory there is no difference between gifts inter vivos and gifts by will, but the principle established by *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236, CA, is not easy to apply to gifts inter vivos: see *Re British School of Egyptian Archaeology, Murray v Public Trustee* [1954] 1 All ER 887 at 891, [1954] 1 WLR 546 at 552 per Harman J.

6 *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236, CA; *Re Soley, Grover v Drapers' Co* (1900) 17 TLR 118.

7 *Re Geikie, Robson v Paterson* (1911) 27 TLR 484; *Re Moon's Will Trusts, Foale v Gillians* [1948] 1 All ER 300; *Re Wright, Blizzard v Lockhart* [1954] Ch 347, [1954] 2 All ER 98, CA.

8 See note 6.

9 See note 7.

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172. Gift of limited duration.

If a gift is only for a specific charitable purpose and is limited to that purpose, and the donor parts with his interest in the property only to the extent necessary for the achievement of that purpose, a subsequent failure of that purpose brings to an end the charity's interest in the property given, so that what remains of it is held upon resulting trust for the donor or falls into residue¹. The question is one of the construction of the gift and may, therefore, turn only on the drafting². In the cases in which a limited gift has been found, there has generally been an express condition or direction relating to failure of the purpose³, and the efficacy of that direction has depended also on its validity as regards the rule against perpetuities⁴. However, the limited intention may perhaps be inferred from the circumstances of the gift⁵.

1 The possibility of such cases was recognised in *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236 at 239, CA, per Kay LJ.

2 Cf *Re Peel's Release* [1921] 2 Ch 218 (gift to be used 'for ever thereafter' for a charitable purpose with a reverter condition if it should cease to be so used: held to be an initial outright gift to charity, subject to gift over which was void for remoteness) with *Re Cooper's Conveyance Trusts, Crewdson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096 (conveyance on trust for a charitable purpose 'and for no other purpose whatsoever' with provision as to the event of a failure of the purpose: held to be only a limited gift to charity, which reverted, on failure of the purpose, to the grantor's heirs). See also *Bath and Wells Diocesan Board of Finance v Jenkinson* (2000) Times, 6 September, [2000] All ER (D) 1142.

3 *Re Randell, Randell v Dixon* (1888) 38 ChD 213 (gift to endure so long as sittings in a particular church were free from pew-rents); *Re Blunt's Trusts, Wigan v Clinch* [1904] 2 Ch 767 (annuity for support of a school so long as it was carried on the trusts of its original trust deed); *Re Cooper's Conveyance Trusts, Crewdson v Bagot* [1956] 3 All ER 28, [1956] 1 WLR 1096. See also *Christ's Hospital v Grainger* (1849) 1 Mac & G 460; *Re Hanbey's Will Trusts, Cutlers' Co v President and Governors of Christ's Hospital, London* [1956] Ch 264, [1955] 3 All ER 874. Cf gifts of land as sites for schools subject to reverter under the School Sites Acts, eg *Bankes v Salisbury Diocesan Council of Education Inc* [1960] Ch 631, [1960] 2 All ER 372; and see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1354.

4 See *Re Bowen, Lloyd Phillips v Davis* [1893] 2 Ch 491; *Re Peel's Release* [1921] 2 Ch 218; *Re Talbot, Jubb v Sheard* [1933] Ch 895. As to the rule against perpetuities see PARA 141. As to the application of the rule against perpetuities to gifts of this kind see PARA 143.

5 *Gibson v South American Stores (Gath and Chaves) Ltd* [1950] Ch 177, [1949] 2 All ER 985, CA (revsg on this point [1949] Ch 572, [1949] 2 All ER 18). Although it was there said that there was no general charitable intention, the court appears to have held also that there was only a limited gift in the sense indicated above: see *Gibson v South American Stores (Gath and Chaves) Ltd*, CA, above at 201 and at 998-999 per Lord Evershed MR. The presence of a power of revocation may have had the same effect as the express gift over in the cases cited in note 3. *Burgess' Trustees v Crawford* 1912 SC 387 cannot now be regarded as good authority in England, in the light of *Re Wright, Blizzard v Lockhart* [1954] Ch 347, [1954] 2 All ER 98, CA.

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(iv) Failure of Public Appeals for Charitable Purposes

173. Types of failure.

The question of the failure of a charitable purpose frequently has to be considered in relation to property given by the public in different ways in response to an appeal; the appeal may be for a temporary purpose which requires less money than is given for it¹, or it may be for a purpose which cannot be achieved at all because of the lack of money subscribed².

Strictly speaking, it may be that where money is subscribed over a period of time and only at the end of the period does it become clear that the purpose is impracticable, the case is one of subsequent failure, for it could not have been said at the moment of each gift that there was no reasonable prospect that the purpose would at some future time be practicable³; but in practice such cases are treated as cases of initial failure⁴, or of gifts upon a condition that the purpose be found practicable⁵.

Furthermore, the courts do not always make a distinction between cases of initial failure in this sense and context and cases where a surplus is left after satisfying the objects of the appeal⁶. The cases establish that different considerations apply to property received from different sources, and this has been partly recognised and partly modified by statute⁷.

1 *Re Hartley Colliery Accident Relief Fund, Plummer v Jordan* (1908) 102 LT 165n; *Re Welsh Hospital (Netley) Fund, Thomas v A-G* [1921] 1 Ch 655; *Re North Devon and West Somerset Relief Fund Trusts, Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260 (the Lynmouth flood disaster).

2 *Re Ulverston and District New Hospital Building Trusts, Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622, [1956] 3 All ER 164, CA; *Re Hillier, Hillier v A-G* [1954] 2 All ER 59, [1954] 1 WLR 700, CA.

3 See the form of inquiry ordered in *Re White's Will Trusts, Barrow v Gillard* [1955] Ch 188, [1954] 2 All ER 620; and PARA 165.

4 Eg in the cases cited in note 2. The distinction which is sometimes made is between the case in which the purpose is never capable of achievement at all, and that in which the question arises after the purpose has to some extent been achieved: see *Re Ulverston and District New Hospital Building Trusts, Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622 at 635-636, [1956] 3 All ER 164 at 171, CA, per Jenkins LJ. As to initial failure see PARAS 165-170.

5 *Re London University Medical Sciences Institute Fund, Fowler v A-G* [1909] 2 Ch 1, CA; see also PARA 135.

6 Eg in *Re North Devon and West Somerset Relief Fund Trusts, Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260.

7 See the Charities Act 1993 s 14; and PARAS 174-176.

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174. General or limited purpose: anonymous gifts.

If the circumstances of the gift are such that a general charitable intention¹ may be found, the failure of the purpose will not cause a failure of the gift, whether it is initially impracticable² or, a fortiori, an unapplied surplus is left³.

However, if the purpose of the appeal was only a limited charitable purpose and that purpose failed, it had been established that anonymous gifts and money collected by way of whist drives, raffles and similar activities were devoted irrevocably to charity⁴, and this was confirmed by statute⁵. Property given for specific charitable purposes⁶ which fail is applicable cy-près⁷ as if given for charitable purposes generally, where it belongs to a donor⁸ who cannot be identified⁹. Property is conclusively presumed, without any advertisement or inquiry, to belong to donors who cannot be identified, in so far as it consists¹⁰: of (1) the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another¹¹; or (2) the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken¹².

1 As to general charitable intention see PARA 166 et seq.

2 *Re Hillier, Hillier v A-G* [1954] 2 All ER 59, [1954] 1 WLR 700, CA.

3 *Re North Devon and West Somerset Relief Fund Trusts, Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260.

4 See *Re Hillier, Hillier v A-G* [1953] 2 All ER 1547, [1954] 1 WLR 9; and compare the non-charity case *Re West Sussex Constabulary's Widows, Children and Benevolent (1930) Fund Trusts, Barnett v Ketteringham* [1971] Ch 1, [1970] 1 All ER 544 (contributions by way of raffles etc are made outright, for the relationship is one of contract not of trust; anonymous gifts are presumed to be given outright, for it would be absurd to impute any other intention to the donors; both therefore became bona vacantia). In *Re Ulverston and District New Hospital Building Trusts, Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622, [1956] 3 All ER 164, CA, Jenkins LJ conceived it possible that any anonymous donor might prove by positive evidence that he only had a limited intention in making his gift. This possibility may now be left out of account by reason of the statutory provisions.

5 See the Charities Act 1993 s 14(3); and the text to notes 6-12.

6 As to the meaning of 'charitable purposes' see PARA 2.

7 As to cy-près schemes see PARA 208 et seq.

8 For these purposes, references to 'donor' include persons claiming through or under the original donor: Charities Act 1993 s 14(10).

9 See the Charities Act 1993 s 14(1)(a); and PARA 175.

10 Charities Act 1993 s 14(3). See PARA 175.

11 Charities Act 1993 s 14(3)(a).

12 Charities Act 1993 s 14(3)(b).

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175. Limited purpose: gifts irrevocable or resulting trust.

It was sometimes held that, where identifiable donors could be presumed to have made outright gifts, the gift might not fail even though the particular purpose of the gift had failed¹.

This principle has been given some statutory recognition. Where property given² for specific charitable purposes³ which fail⁴ belongs to a donor⁵ who has executed in the prescribed form⁶ a disclaimer of his right to have the property returned⁷, it is applicable cy-près as if given for charitable purposes generally⁸.

Property given for specific charitable purposes which fail is applicable cy-près as if given for charitable purposes generally where it belongs to a donor who after the prescribed advertisements⁹ and inquiries have been published and made, and the prescribed period beginning with the publication of those advertisements has expired, cannot be identified or cannot be found¹⁰. Where the prescribed advertisements and inquiries have been published and made by or on behalf of trustees with respect to any such property, the trustees are not liable to any person in respect of the property if no claim by him to be interested in it is received by them before the expiry of the prescribed period¹¹. The court¹² or the Charity Commission may by order direct certain property¹³ be treated, without any advertisement or inquiry, as belonging to donors who cannot be identified where it appears to the court or the Commission either¹⁴: (1) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property¹⁵; or (2) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned¹⁶.

The following applies where a person has given property¹⁷ for specific charitable purposes¹⁸ which fail¹⁹ and the property is given in response to a solicitation²⁰ which is:

- 45 (1) made for specific charitable purposes²¹; and
- 46 (2) accompanied by a statement to the effect that property given in response to it will, in the event of those purposes failing, be applicable cy-près as if given for charitable purposes generally, unless the donor makes a relevant declaration²² at the time of making the gift²³.

Where the donor has not made a relevant declaration the property is applicable cy-près as if given for charitable purposes generally²⁴ by a donor²⁵ who has executed a disclaimer in the prescribed form of his right to have the property returned²⁶.

However where the donor has made a relevant declaration²⁷, the trustees holding the property must take the prescribed²⁸ steps for the purpose of informing the donor of the failure of the purposes²⁹, inquiring whether he wishes to request the return of the property (or a sum equal to its value)³⁰, and if within the prescribed period he makes such a request, returning the property (or such a sum) to him³¹. If those trustees have taken all appropriate prescribed steps but they have failed to find the donor³² or the donor does not within the prescribed period request the return of the property (or a sum equal to its value)³³, the property is applicable cy-près as if given for charitable purposes generally³⁴ by a donor³⁵ who has executed a disclaimer in the prescribed form of his right to have the property returned³⁶.

Subject to the above statutory provisions, property given for specific charitable purposes which fail from the first with no general charitable intention, so far as it was given by identifiable donors, is held upon resulting trust for them³⁷ rateably in the proportion that each donor's gift bore to the whole sum given³⁸.

1 *Re Dover's Battle of Britain Memorial Hospital Fund* (1955) Times, 29 June. But in so far as this case depended on assuming that all donors gave on the same terms, it must be read in the light of *Re Ulverston and District New Hospital Building Trusts*, *Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622, [1956] 3 All ER 164, CA. See also *Re British School of Egyptian Archaeology*, *Murray v Public Trustee* [1954] 1 All ER 887, [1954] 1 WLR 546; *Munster and Leinster Bank v A-G* (1954) 91 ILT 34.

2 For these purposes, references to 'property given' include property for the time being representing property originally given or property derived from it: Charities Act 1993 s 14(10).

3 As to the meaning of 'charitable purpose' see PARA 2.

4 For these purposes, a charitable purpose is deemed to 'fail' where any difficulty in applying property to those purposes makes that property or the part not applicable cy-près available to be returned to the donors: Charities Act 1993 s 14(7). As to cy-près schemes see PARA 208 et seq.

5 As to the meaning of 'donor' see PARA 174 note 8.

6 For these purposes, 'prescribed' means prescribed by regulations made by the Charity Commission, which it must publish in such manner as it thinks fit: Charities Act 1993 s 14(8), (9) (amended by the Charities Act 2006 Sch 8 para 107(4)). As to the Charity Commission see PARAS 538-572.

7 A donor who disclaims is deemed to have parted with all his interest at the time the gift was made: see the Charities Act 1993 s 14(1)(b), (5); and note 19.

8 Charities Act 1993 s 14(1)(b). Section 14 applies to property notwithstanding that it was so given before the commencement of the relevant statutory provision: see s 14(11).

9 As respects the advertisements which are to be published, regulations may make provision as to the form and content of such advertisements as well as the manner in which they are to be published: Charities Act 1993 s 14(8).

10 Charities Act 1993 s 14(1)(a). See PARA 174. See also note 8.

11 Charities Act 1993 s 14(2). The prescribed period referred to in the text is the period mentioned in s 14(1)(a) (see the text and note 11): see s 14(2).

12 'Court' means the High Court and, within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court, and includes any judge or officer of the court exercising the jurisdiction of the court: Charities Act 1993 s 97(1).

13 If property not falling within the Charities Act 1993 s 14(3) (which is so treated without any order or any advertisement or inquiry): see PARA 174 text and notes 10-12. The significance of s 14(3), (4) is that property falling within those subsections is applicable cy-près without the expense of advertisements and inquiries.

14 Charities Act 1993 s 14(4) (amended by the Charities Act 2006 s 16).

15 Charities Act 1993 s 14(4)(a).

16 Charities Act 1993 s 14(4)(b).

17 For these purposes, references to 'property given' include property for the time being representing property originally given or property derived from it: Charities Act 1993 s 14(10) (applied by s 14A(10) (s 14A added by the Charities Act 2006 s 17)). It is irrelevant whether any consideration is or is to be given in return for the property in question: Charities Act 1993 s 14A(8)(b) (as so added).

18 Charities Act 1993 s 14A(1)(a), (4)(a), (7)(a) (as added: see note 18).

19 Charities Act 1993 s 14A(4)(b), (7)(b) (as added: see note 18).

20 Charities Act 1993 ss 14A(1)(b), (4)(a) (as added: see note 18). For these purposes 'solicitation' means a solicitation made in any manner and however communicated to the persons to whom it is addressed: s 14A(8)(a) (as so added).

21 Charities Act 1993 s 14A(2)(a) (as added: see note 18).

22 A 'relevant declaration' is a declaration in writing by the donor to the effect that, in the event of the specific charitable purposes failing, he wishes the trustees holding the property to give him the opportunity to request the return of the property in question (or a sum equal to its value at the time of the making of the gift): Charities Act 1993 s 14A(3) (as added: see note 18).

23 Charities Act 1993 s 14A(2)(b) (as added: see note 18). Where any appeal consists of both solicitations that are accompanied by statements within s 14A(2)(b) and solicitations that are not so accompanied, a person giving property as a result of the appeal is to be taken to have responded to the former solicitations and not the latter, unless he proves otherwise: s 14A(8)(c) (as so added).

24 If the Charities Act 1993 s 14(1) applies.

- 25 le a donor within the Charities Act 1993 s 14(1)(b).
- 26 See the Charities Act 1993 s 14A(7) (as added: see note 18).
- 27 See the Charities Act 1993 s 14A(4)(c) (as added: see note 18).
- 28 'Prescribed' means prescribed by regulations made by the Commission, and any such regulations must be published by the Commission in such manner as it thinks fit: Charities Act 1993 s 14A(9) (as added: see note 18).
- 29 Charities Act 1993 s 14A(5)(a) (as added: see note 18).
- 30 Charities Act 1993 s 14A(5)(b) (as added: see note 18).
- 31 Charities Act 1993 s 14A(5)(c) (as added: see note 18).
- 32 Charities Act 1993 s 14A(6)(a) (as added: see note 18).
- 33 Charities Act 1993 s 14A(6)(b) (as added: see note 18).
- 34 le the Charities Act 1993 s 14(1) applies.
- 35 le a donor within the Charities Act 1993 s 14(1)(b).
- 36 Charities Act 1993 s 14A(6) (as added: see note 18).
- 37 *Re Henry Wood National Memorial Trust, Armstrong v Moiseiwitsch* (1965) 109 Sol Jo 876.
- 38 *Re British Red Cross Balkan Fund, British Red Cross Society v Johnson* [1914] 2 Ch 419. The rule in *Clayton's Case* (1816) 1 Mer 572 (see **EQUITY** vol 16(2) (Reissue) PARA 864) does not apply to the fund that is left for distribution. Where property is applied cy-près by the Charities Act 1993 s 14, the donor is deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue s 14(3) (see PARA 174) or s 14(4) (as amended: see note 15): (1) the scheme must specify the total amount of that property; and (2) the donor of any part of that amount is entitled, if he makes a claim not later than six months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and (3) the scheme may include directions as to the provision to be made for meeting any such claim: s 14(5). Where:
- 1 (a) any sum is, in accordance with any such directions, set aside for meeting any such claims (s 14(6)(a)); but
 - 2 (b) the aggregate amount of any such claims actually made exceeds the relevant amount (s 14(6)(b));
- then, if the Commission so directs, each of the donors in question is entitled only to such proportion of the relevant amount as the amount of his claim bears to the aggregate amount referred to in head (b) above: s 14(6) (amended by the Charities Act 2006 Sch 8 para 107(2)). For these purposes 'relevant amount' means the amount of the sum so set aside after deduction of any expenses properly incurred by the charity trustees in connection with claims relating to the donors' gifts: Charities Act 1993 s 14(6). As to the meaning of 'charity' see PARA 1. As to the meaning of 'charity trustees' see PARA 1 note 10. As to directions given by the Commission see PARA 549. As to schemes see PARA 177 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/3. FAILURE OF STATED CHARITABLE OBJECTS/(2) CONSEQUENCES OF FAILURE OF STATED OBJECTS/(iv) Failure of Public Appeals for Charitable Purposes/176. Cy-près application on subsequent failure.

176. Cy-près application on subsequent failure.

Independently of the statutory provisions¹, where property has been given in response to a public appeal and a surplus was left after the purposes had been carried out so far as possible,

the property has generally been held to be applicable cy-près², even without regard to the question of general charitable intention³. In any case of subsequent failure in which, under the general law, the surplus assets are not applicable cy-près⁴, the statutory provisions would now operate to make the surplus applicable cy-près so far as it belongs to unidentifiable donors or donors who have disclaimed⁵.

1 le the Charities Act 1993 ss 14, 14A: see PARAS 174-175.

2 *Re Hartley Colliery Accident Relief Fund, Plummer v Jordan* (1908) 102 LT 165n; *Re Welsh Hospital (Netley) Fund, Thomas v A-G* [1921] 1 Ch 655; *Re North Devon and West Somerset Relief Fund Trusts, Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260.

3 *Re Wokingham Fire Brigade Trusts, Martin v Hawkins* [1951] Ch 373, [1951] 1 All ER 454, approved in *Re Ulverston and District New Hospital Building Trusts, Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622, [1956] 3 All ER 164, CA, where Jenkins LJ said that the question of general charitable intention could also have been ignored in *Re North Devon and West Somerset Relief Fund Trusts, Hylton v Wright* [1953] 2 All ER 1032, [1953] 1 WLR 1260. See also *Re British School of Egyptian Archaeology, Murray v Public Trustee* [1954] 1 All ER 887 at 892, [1954] 1 WLR 546 at 553, where Harman J compared the questions of general charitable intention and out and out gift to charity. The only case in which such a surplus after subsequent failure has been held on resulting trust appears to be *Re British Red Cross Balkan Fund, British Red Cross Society v Johnson* [1914] 2 Ch 419; it is there stated to have been admitted, but the Attorney General was not a party and the concession may not have been correctly made or binding on him. As to cy-près schemes see PARA 208 et seq.

4 Alternatively, where they do not pass as bona vacantia; the distinction is academic, but is adverted to in *Re Hillier, Hillier v A-G* [1953] 2 All ER 1547, [1954] 1 WLR 9, and in *Re Ulverston and District New Hospital Building Trusts, Birkett v Barrow and Furness Hospital Management Committee* [1956] Ch 622, [1956] 3 All ER 164, CA. For the cases in which property reverts to the donor on a subsequent failure of the charitable purposes see PARA 172.

5 The provisions of the Charities Act 1993 s 14(4)(b), (7) (see PARA 175) indicate that the provision applies to subsequent as well as to initial failure.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(1) SCHEMES/(i) Direction of Schemes/177. Jurisdiction.

4. SCHEMES AND THE CY-PRÈS DOCTRINE

(1) SCHEMES

(i) Direction of Schemes

177. Jurisdiction.

When it is necessary to define the objects or regulate the mode of administration of a charity, a scheme is usually directed either by the court¹, the Charity Commission² or the Tribunal³. Where, however, there is a gift to charity generally, without the interposition of any trust, and it is necessary to apply the gift to some specific charitable purposes, the application is directed by the Attorney General, to whom the power of the Crown to dispose of charitable gifts under the sign manual has been delegated⁴.

1 See PARA 181 et seq.

2 See PARA 187 et seq. As to the Charity Commission see PARAS 538-572.

3 As to the Tribunal see PARA 573 et seq.

4 See PARA 509.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(1) SCHEMES/(i) Direction of Schemes/178. General principles for direction of schemes.

178. General principles for direction of schemes.

A scheme is the method generally employed by the court in administering a charitable trust and is not necessarily, or generally, a scheme for the application of the fund cy-près¹. It may be used to give effect to the donor's intention, for example by dealing not only with the method of administration but also with the substance of the trust, and by defining it². A scheme will be directed where the trusts of the instrument of foundation are ambiguous or insufficient, or where no particular objects are defined³, or where there are no trustees, or the trustees are dead⁴ or refuse to act⁵, or where there has been an increase in the revenue of the charity⁶, or the persons managing the charity have misapplied its property⁷, or where the charity's investment powers have become inadequate in changed economic circumstances⁸, or where a legacy to a charity is to be confined to a particular part of its activities⁹, or where for any other reason it is thought expedient to regulate the administration of the charity¹⁰, or to remove or modify conditions or directions imposed in the trust¹¹.

Schemes may be directed even where there is an unlimited discretion as to distribution left to trustees¹², but in such a case the scheme is framed as far as possible to meet the trustees' wishes¹³.

Where legacies¹⁴ or annual sums¹⁵ are given to be distributed in charity at the discretion of private individuals or public institutions, and no permanent trust is intended, schemes for the application of the money are not essential, though in many cases they are directed by the court¹⁶.

A scheme is generally necessary on any application of a charitable fund cy-près¹⁷, unless the trust is altered only in detail¹⁸.

Under a scheme sanctioned by the court containing general terms without any reference to any foreign country, a charity must be administered and the trusts of the scheme carried into effect within the jurisdiction¹⁹.

A scheme may confer upon the trustees or governors of the charity power to alter some of its provisions²⁰.

1 *Re Robinson, Besant v German Reich* [1931] 2 Ch 122 at 128 per Maugham J. As to the cy-près doctrine see PARA 208 et seq.

2 *Re Gott, Glazebrook v Leeds University* [1944] Ch 193, [1944] 1 All ER 293.

3 *A-G v Clarke* (1762) Amb 422; *Re White, White v White* [1893] 2 Ch 41, CA. See *Re Mason's Orphanage and London and North-Western Ry Co* (1895) 65 LJCh 32 at 34 per Stirling J (on appeal [1896] 1 Ch 596, CA); and PARA 208.

4 *Moggridge v Thackwell* (1803) 7 Ves 36 (affd (1807) 13 Ves 416, HL); *A-G v Gladstone* (1842) 13 Sim 7; *Re Stanes' Will, Re Trustee Relief Act* (1853) 21 LTOS 261. As to the failure of trustees see PARA 206.

5 *Reeve v A-G* (1843) 3 Hare 191; and see PARA 206.

6 Eg *A-G v Caius College* (1837) 2 Keen 150; *A-G v Warden etc of Louth Free School* (1851) 14 Beav 201; *Re Campden Charities* (1881) 18 ChD 310, CA.

7 *A-G v Coopers' Co* (1812) 19 Ves 187.

8 *Re Royal Society's Charitable Trusts* [1956] Ch 87, [1955] 3 All ER 14, where the court's functions in relation to administrative schemes are considered; *Steel v Wellcome Custodian Trustees Ltd* [1988] 1 WLR 167 (exceptional case where foundation of scheme was a perfectly general power to apply the fund in the acquisition of any property whatsoever as if the trustees were absolutely and beneficially entitled). See also *Re Shipwrecked Fishermen and Mariners' Royal Benevolent Society Charity* [1959] Ch 220, [1958] 3 All ER 465; *Re Royal Naval and Royal Marine Children's Homes, Portsmouth, Lloyds Bank Ltd v A-G* [1959] 2 All ER 716n, [1959] 1 WLR 755; *Re University of London Charitable Trusts* [1964] Ch 282, [1963] 3 All ER 859. As to the investment powers of charities generally and the power to make common investment schemes see PARAS 416, 419.

9 *Re Spence, Ogden v Shackleton* [1979] Ch 483, sub nom *Re Spence's Will Trusts, Ogden v Shackleton* [1978] 3 All ER 92.

10 See *A-G v St Olave's Grammar School, Southwark* (1837) Coop Pr Cas 267; *A-G v Dedham School* (1857) 23 Beav 350; *Re Forbes, Forbes v Forbes* (1910) 27 TLR 27.

11 *Re Robinson, Wright v Tugwell* [1923] 2 Ch 332 (removing 'abiding' condition that a black gown should be worn in the pulpit); *Re Dominion Students' Hall Trust* [1947] Ch 183 (removing colour bar from trust for Dominion students); *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888 (removing provision for religious discrimination); *Re Woodhams, Lloyds Bank Ltd v London College of Music* [1981] 1 All ER 202, [1981] 1 WLR 493 (modifying restrictions on beneficiaries); *Re JW Laing Trust, Steward's Co Ltd v A-G* [1984] Ch 143, [1984] 1 All ER 50 (obligation to distribute whole of capital and income within ten years of settlor's death removed where trust fund set up in 1922 with £15,000 and worth £24m at time of application); *Re Stewart's Will Trusts* [1983] NI 283.

12 *A-G v Stepney* (1804) 10 Ves 22; *Waldo v Caley* (1809) 16 Ves 206 at 211 per Grant MR; *Jemmit v Verril* (1826) Amb 585n; *Barclay v Maskelyne* (1858) 32 LTOS 205; *Re Hurley, Nichols v Pargiter* (1900) 17 TLR 115; and cf *Re Barnett* (1860) 29 LJCh 871; *Dick v Audsley* [1908] AC 347 at 351, HL, per Lord Loreburn LC.

13 *Bennett v Honywood* (1772) Amb 708 at 710 per Lord Apsley LC; *A-G v Gaskell* (1831) 9 LJOS Ch 188; *Re Delmar Charitable Trust* [1897] 2 Ch 163 at 168 per Stirling J.

14 *A-G v Glegg* (1738) Amb 584; *Johnston v Swann* (1818) 3 Madd 457; *Re Barnett* (1860) 29 LJCh 871; *Re Lea, Lea v Cooke* (1887) 34 ChD 528; and see *Re Garrard, Gordon v Craigie* [1907] 1 Ch 382.

15 *Horde v Earl of Suffolk* (1833) 2 My & K 59. See also *Waldo v Caley* (1809) 16 Ves 206; *Powerscourt v Powerscourt* (1824) 1 Mol 616; *Shrewsbury v Hornby* (1846) 5 Hare 406; *Mahon v Savage* (1803) 1 Sch & Lef 111; *Re Lea, Lea v Cooke* (1887) 34 ChD 528.

16 *Doyley v Doyley* (1735) 7 Ves 58n; *A-G v Stepney* (1804) 10 Ves 22; *Paice v Archbishop of Canterbury* (1807) 14 Ves 364; *Baker v Sutton* (1836) 1 Keen 224; *Pocock v A-G* (1876) 3 ChD 342, CA; *Re Hurley, Nichols v Pargiter* (1900) 17 TLR 115.

17 *Martin v Maugham* (1844) 14 Sim 230; *Biscoe v Jackson* (1887) 35 ChD 460, CA; *Re Bradwell, Goode v Board of Trustees for Methodist Church Purposes* [1952] Ch 575, [1952] 2 All ER 286.

18 *Re Richardson, Shuldham v Royal National Lifeboat Institution* (1887) 56 LJCh 784.

19 *Re Mirrlees' Charity, Mitchell v A-G* [1910] 1 Ch 163.

20 *Re Jewish Orphanage Endowment Trusts, Sebag-Montefiore v Rothschild Executor and Trustee Co* [1960] 1 All ER 764, [1960] 1 WLR 344.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(1) SCHEMES/(i) Direction of Schemes/179. Where a scheme is not required.

179. Where a scheme is not required.

Legacies to or for the benefit of established institutions, whether incorporated¹ or not², or to their presidents³, trustees, treasurers or officers⁴, as part of their general funds or upon similar

trusts to those upon which the general funds are held, may be paid without a scheme being directed⁵. A gift to an individual engaged in a charitable activity for the purposes of that activity may also be paid to that individual without a scheme⁶. Similarly, unless the Attorney General objects, a gift for the purposes of an institution which has ceased to exist may be paid, without a formal scheme, to another institution carrying on the same work⁷; and a legacy may be paid to a trustee without a scheme upon an undertaking to apply the legacy to the charitable purposes of the bequest and render accounts to the Attorney General⁸.

On the same principle, legacies for the benefit of a parish church⁹, or a Roman Catholic¹⁰ or dissenters¹¹ chapel, may be paid to the churchwardens and trustees respectively.

A scheme is not necessary in the case of a gift to an institution for its general purposes but subject to special conditions, as, for example, that certain lifeboats should be maintained¹², or that a particular person should have rights of nomination to a hospital¹³.

1 *Emery v Hill* (1826) 1 Russ 112; *Society for the Propagation of the Gospel v A-G* (1826) 3 Russ 142; *A-G v Christ's Hospital* (1830) 1 Russ & M 626; *Re Richardson, Shuldham v Royal National Lifeboat Institution* (1887) 56 LJCh 784.

2 *Re M'Auliffe's Goods* [1895] P 290. See also *Re Lalor's Goods* (1901) 85 LT 643.

3 *Walsh v Gladstone* (1843) 1 Ph 290 (president of a college).

4 *Wellbeloved v Jones* (1822) 1 Sim & St 40 at 43 per Leach V-C; *Emery v Hill* (1826) 1 Russ 112.

5 See also *Minet v Vulliamy* (1819) cited in 1 Russ 113n; *Carter v Green* (1857) 3 K & J 591; and *Re Surfleet's Estate, Rawlings v Smith* (1911) 105 LT 582 (where the gifts were to institutions whose objects included the purchase of land); *Makeown v Ardagh* (1876) IR 10 Eq 445. Cf *Wellbeloved v Jones* (1822) 1 Sim & St 40; *Sons of the Clergy Corp'n v Mose* (1839) 9 Sim 610 (where the gifts were on trusts not identical with the purposes of the institutions).

6 *Re Rees, Jones v Evans* [1920] 2 Ch 59.

7 See eg *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050.

8 *Re Reddish, Penton v Waters* [1934] WN 198. See *Re Wedgwood, Sweet v Cotton* [1914] 2 Ch 245.

9 *A-G v Ruper* (1722) 2 P Wms 125.

10 *De Windt v De Windt* (1854) 23 LJCh 776.

11 *Bunting v Marriott* (1854) 19 Beav 163.

12 *Re Richardson, Shuldham v Royal National Lifeboat Institution* (1887) 56 LJCh 784.

13 *A-G v Christ's Hospital* (1830) 1 Russ & M 626. Cf *Re Lopes, Bence-Jones v Zoological Society of London* [1931] 2 Ch 130, where there was a scheme.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(1) SCHEMES/(i) Direction of Schemes/180. Property situated or payable abroad.

180. Property situated or payable abroad.

The court will not direct a scheme to be settled where the charity's property is out of the jurisdiction, or is a fund payable to trustees out of the jurisdiction¹. In such a case the court may direct an inquiry whether the trust can be carried into effect according to the law of the particular country², and may pay the money to the persons selected by the testator as the instruments of his benevolence, if they are proper persons to act as trustees³, but not

otherwise⁴, or may appoint new trustees for the purpose⁵, or may retain the fund in court and direct payment of the dividends to the persons entrusted by the testator with the application of them⁶, or may retain the fund in court to await the result of an application to the foreign court⁷, or may give liberty to carry into effect a scheme to be settled by the foreign court⁸.

The court may direct a scheme to be settled where trusts, which have been established within the jurisdiction for the endowment of a charitable object out of the jurisdiction, become impracticable but the fund and the trustees are within the jurisdiction⁹.

Where a scheme became necessary, for lack of objects, in relation to funds administered by an institution which had become subject to a foreign state, the court refused to allow the institution to continue to administer the trusts¹⁰.

1 Eg in Scotland (*Edinburgh Corp v Aubery* (1753) Amb 236; *A-G v Lepine* (1818) 2 Swan 181; *Emery v Hill* (1826) 1 Russ 112; *Re Marr's Will Trusts, Walker v A-G* [1936] Ch 671); Switzerland (*Minet v Vulliamy* (1819) cited in 1 Russ 113n); France (*Martin v Paxton* (1824) cited in 1 Russ 116); United States of America (*Society for the Propagation of the Gospel v A-G* (1826) 3 Russ 142; *New v Bonaker* (1867) LR 4 Eq 655); Germany (*Re Robinson, Besant v German Reich* [1931] 2 Ch 122 at 129 per Maugham J).

2 *Thompson v Thompson* (1844) 1 Coll 381 at 394 per Shadwell V-C (Scotland). See *New v Bonaker* (1867) LR 4 Eq 655 (United States of America).

3 *Edinburgh Corp v Aubery* (1753) Amb 236; *A-G v Lepine* (1818) 2 Swan 181; *Minet v Vulliamy* (1819) cited in 1 Russ 113n; *Martin v Paxton* (1824) cited in 1 Russ 116; *Emery v Hill* (1826) 1 Russ 112; *Collyer v Burnett* (1829) Tam 79; *Mitford v Reynolds* (1842) 1 Ph 185 at 197 per Lord Lyndhurst LC. See also *New v Bonaker* (1867) LR 4 Eq 655; *Lyons Corp v Advocate-General of Bengal* (1876) 1 App Cas 91, PC.

4 *Lyons Corp v East India Co* (1836) 1 Moo PCC 175.

5 *A-G v Stephens* (1834) 3 My & K 347. See also *A-G v Fraunces* [1866] WN 280, where a fund given to a school in a parish in the United States of America was directed to be paid to the governors of another school in the same parish, the original school having disappeared.

6 *A-G v Lepine* (1818) 2 Swan 181. See also *A-G v Sturge* (1854) 19 Beav 597, where the official charged by the testator with the distribution of a fund had died, and the court directed payment to be made to the holder of the office for the time being.

7 *Forbes v Forbes* (1854) 18 Beav 552; *Re Fraser, Yeates v Fraser* (1883) 22 ChD 827.

8 *Re Marr's Will Trusts, Walker v A-G* [1936] Ch 671. Cf *Re Lipton's Trustees* 1943 SC 521, Ct of Sess; *Re Neech's Executors* 1947 SC 119, Ct of Sess.

9 *Re Colonial Bishopricks Fund 1841* [1935] Ch 148.

10 *A-G v London Corp* (1790) 3 Bro CC 171. The charity had been administered in the United States of America, but the founder's will did not confine its scope to America.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(1) SCHEMES/(ii) Settlement of Schemes by the Court/181. General jurisdiction and powers.

(ii) Settlement of Schemes by the Court

181. General jurisdiction and powers.

In general the court has jurisdiction in every case to make schemes to regulate the administration of a charity, and the Charity Commission has equal concurrent jurisdiction with the court¹.

However, the court now normally makes schemes only in contentious cases or cases which involve special complexities or difficult question of law or fact². Formerly it was the rule that the court would make a scheme if it became necessary in the course of an administration action or any charitable proceedings³.

Where the court undertakes the execution of charitable trusts it will not retain the funds under its direct control but will direct a scheme in accordance with which the trustees will administer the funds⁴.

The court may make a scheme supplemental to the original trusts and temporary in effect⁵ or a scheme effective only until the happening of a certain event⁶.

If the original trusts are altered by a scheme, a gift over on alteration or non-compliance with the trusts will not take effect⁷.

1 See the Charities Act 1993 s 16(1); and PARA 187. As to the jurisdiction of the court and the Commission in relation to ecclesiastical charities see PARA 194. In most cases an application to the court for a scheme may only be made with the leave of the Commission: see PARA 588. As to the Charity Commission see PARAS 538-572.

2 See the Charities Act 1993 s 16(10); and PARA 187. Section 16(10) substantially re-enacts the Charitable Trusts Act 1860 s 5, under which it was decided that the Charity Commissioners (now the Charity Commission) were not precluded from exercising jurisdiction in contentious cases: *Re Burnham National Schools* (1873) LR 17 Eq 241, not following dictum in *Re Hackney Charities, ex p Nicholls* (1864) 34 LJCh 169; on appeal (1865) 4 De GJ & Sm 588.

3 See eg *Re Huxtable, Huxtable v Crawford* [1902] 2 Ch 793, CA; *Wellbeloved v Jones* (1822) 1 Sim & St 40; *A-G v Haberdashers' Co* (1852) 15 Beav 397. Now it is usual to refer the matter to the Commission under the Charities Act 1993 s 16(2) for it to settle a scheme: see PARA 189.

4 *A-G v Solly* (1835) 5 LJCh 5; *A-G v Haberdashers' Co* (1791) 1 Ves 295; *A-G v Haberdashers' Co* (1852) 15 Beav 397 at 406 per Romilly MR. See *A-G v Governors of Harrow School* (1754) 2 Ves Sen 551; *A-G v Townley* (1829) Shelford's Law of Mortmain 442.

5 See *A-G v Price* (1908) 24 TLR 761; revsd [1912] 1 Ch 667, CA; on appeal sub nom *Price v A-G* [1914] AC 20, HL. Cf *A-G v Edalji* (1907) 97 LT 292.

6 *Re Royal Naval and Royal Marine Children's Homes, Portsmouth, Lloyds Bank Ltd v A-G* [1959] 2 All ER 716n, [1959] 1 WLR 755.

7 *Re Bacon's Charity* (7 December 1878, unreported) per Jessel MR; a report of the case is on the files of the Charity Commission and it is noted at Tudor on Charities (4th Edn, 1906) 187 note (q). See also *Re Parish of Upton Warren* (1833) 1 My & K 410; *Christ's Hospital v Grainger* (1849) 1 Mac & G 460 at 464 per Lord Cottenham LC; *Re Trustees of the Orchard Street Schools* [1878] WN 211; *Re Hanbey's Will Trusts, Cutlers' Co v President and Governors of Christ's Hospital, London* [1956] Ch 264, [1955] 3 All ER 874. Quaere whether the court would make a scheme having the effect of defeating a resulting trust (as distinct from a gift over to another charity) on non-compliance with the trusts and whether, if the event on which the resulting trust was to arise had already happened, there would be jurisdiction to make such a scheme.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(1) SCHEMES/(ii) Settlement of Schemes by the Court/182. Schemes in relation to chartered charities.

182. Schemes in relation to chartered charities.

Before 1961 the court and the Charity Commissioners (now the Charity Commission)¹ had only very limited jurisdiction over charities established by royal charter², and the appropriate procedure for any substantial alteration was the grant and acceptance of a new charter, although it was doubtful whether this could alter the purposes for which funds already held could be applied, at least in the case of an eleemosynary corporation. Now, however, where a

royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter, a scheme relating to the body corporate or to the administration of property held by the body (including a scheme for the cy-près application³ of any such property) may be made by the court⁴ under the court's jurisdiction with respect to charities notwithstanding that the scheme cannot take effect without the alteration of the charter⁵. The scheme must be so framed that it, or such part of it as cannot take effect without the alteration of the charter, does not purport to come into operation unless or until Her Majesty thinks fit to amend the charter in such manner as will permit the scheme or that part of it to have effect⁶.

Where under the court's jurisdiction with respect to charities, or under powers conferred by the Charities Act 1993, a scheme is made with respect to a body corporate, and it appears to Her Majesty expedient, having regard to the scheme, to amend any royal charter relating to that body, Her Majesty may, on the application of that body, amend the charter accordingly by Order in Council in any way in which the charter could be amended by the grant and acceptance of a further charter⁷. Any such Order in Council may be revoked or varied in like manner as the charter it amends⁸.

1 As to the Charity Commission see PARAS 538-572.

2 See *Re Whitworth Art Gallery Trusts, Manchester Whitworth Institute v Victoria University of Manchester* [1958] Ch 461, [1958] 1 All ER 176.

3 As to cy-près applications see PARA 208 et seq.

4 As to the meaning of 'court' see PARA 175 note 12.

5 Charities Act 1993 s 15(1). The powers conferred by s 15(1), (2) have been extensively used: see the *Report of the Charity Commissioners for England and Wales for 1965* (HC Paper (1966-67) no 108) pp 8-9; *Report of the Charity Commissioners for England and Wales for 1967* (HC Paper (1967-68) no 261) pp 15-18.

6 Charities Act 1993 s 15(1).

7 See the Charities Act 1993 s 15(2). See eg the Royal College of Ophthalmologists (Charter Amendment) Order 1998, SI 1998/2552; the Royal College of Physicians (Charter Amendment) Order 1999, SI 1999/667; the Licensed Victuallers' National Homes (Charter Amendment) Order 2000, SI 2000/1348; the Institution of Chemical Engineers (Charter Amendment) Order 2004, SI 2004/1986.

8 Charities Act 1993 s 15(2).

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183. Schemes in relation to certain statutory charities.

The court has no inherent jurisdiction to alter such of the trusts of a charity as are established by or by virtue of a statute¹. However, the Charities Act 1993 provides that the jurisdiction of the court² with respect to charities³ is not to be restricted or excluded in relation to certain classes of charities by the statutes by or under which they are established⁴. The specified classes are as follows:

- 47 (1) charities established or regulated by any provision of the Seamen's Fund Winding-up Act 1851⁵;
- 48 (2) charities established or regulated by schemes under statutory provisions relating to endowed schools and elementary education⁶;

- 49 (3) fuel allotments⁷;
- 50 (4) charities established or regulated under any provision of the Municipal Corporations Act 1883 or by any scheme under any such provision⁸;
- 51 (5) charities regulated by schemes under the London Government Act 1899⁹;
- 52 (6) charities established or regulated by orders or regulations under certain provisions¹⁰ of the Regimental Charitable Funds Act 1935¹¹;
- 53 (7) parochial charities regulated by the Charities Act 1993¹².

A scheme established for any such charity may modify or supersede in relation to it the provision made by any such enactment or instrument as if made by a scheme of the court, and may also make any such authorised¹³ provision¹⁴.

1 *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324 at 333 per Lord Cottenham LC; *A-G v Governors of Christ's Hospital* [1896] 1 Ch 879; *Trustees of the London Parochial Charities v A-G* [1955] 1 All ER 1, [1955] 1 WLR 42. See also *Warren v Clancy* [1898] 1 IR 127, CA; *Re Imprisoned Debtors Discharge Society's Act 1856* (1912) 28 TLR 477, CA. As to the amendment of statutes establishing or regulating charities see also PARA 191.

2 As to the meaning of 'court' see PARA 175 note 12.

3 As to the meaning of 'charity' see PARA 1.

4 See the Charities Act 1993 s 15(3).

5 Charities Act 1993 s 15(3), Sch 4 para 1(a). The Seamen's Fund Winding-up Act 1851 was repealed by the Charities Act 1960 Sch 5 (repealed).

6 Charities Act 1993 Sch 4 para 1(b). The statutory provisions referred to in the text are the Endowed Schools Act 1869, the Endowed Schools Act 1873, the Endowed Schools Act 1874, the Welsh Intermediate Education Act 1889, the Endowed Schools (Masters) Act 1908, the Education (Miscellaneous Provisions) Act 1948 s 2, Sch 1 Pt II, the Elementary Education Act 1870 s 75, the Education Act 1973 s 2 (all repealed) and the Education Act 1996 s 554: Charities Act 1993 Sch 4 para 1(b) (amended by the Education Act 1996 Sch 37, para 121). As to schemes under the Endowed Schools Acts and power to make new provision as to the use of endowments see the Education Act 1996 ss 553-556; and **EDUCATION** vol 15(2) (2006 Reissue) PARAS 1434-1435. As to rights of reverter see PARA 70.

7 Charities Act 1993 Sch 4 para 1(d), which defines 'fuel allotments' as land which under any enactment relating to inclosure or any instrument having an effect under any such enactment, is vested in trustees upon trust that the land or the rents and profits of the land be used for the purpose of providing poor persons with fuel. Notwithstanding anything in the Commons Act 1876 s 19, a scheme for the administration of a fuel allotment may contain certain provisions for the disposal or exchange of the allotment or for its use for any purposes specified in the scheme: see the Charities Act 1993 Sch 4 para 2; and **AGRICULTURAL LAND** vol 1 (2008) PARA 513. As to other types of allotment under the Inclosure Acts see PARA 193.

8 Charities Act 1993 Sch 4 para 1(e). The relevant provisions of the Municipal Corporations Act 1883 were repealed by the Charities Act 1960 s 39(1), Sch 5 (repealed).

9 Charities Act 1993 Sch 4 para 1(f). The relevant provisions of the London Government Act 1899 have been repealed.

10 Ie the Regimental Charitable Funds Act 1935 s 2: see **ARMED FORCES**.

11 Charities Act 1993 Sch 4 para 1(g).

12 Charities Act 1993 Sch 4 para 1(h). As to the regulation of parochial charities see s 79 and orders made under it: see PARAS 264-266.

13 Ie authorised by the Charities Act 1993 Sch 4: see the text and notes 2-12.

14 Charities Act 1993 s 15(3).

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184. Attorney General's consent.

The application or consent of the Attorney General is probably necessary to an alteration of a scheme by the court¹. In a proper case it is his duty to make the necessary application².

The court will not, upon the motion of one of the interested parties³, alter a scheme which it has settled with the approval of the Attorney General.

1 *A-G v Stewart* (1872) LR 14 Eq 17; and see *A-G v Hall* (1875) 3 Seton's Form of Decrees, Judgments and Orders (7th Edn, 1912) 1259. See also *Re Royal Society's Charitable Trusts* [1956] Ch 87, [1955] 3 All ER 14.

2 *A-G v Bishop of Worcester* (1851) 9 Hare 328 at 360 per Turner V-C.

3 *Re Sekeford's Charity* (1861) 5 LT 488.

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185. Alteration of schemes settled by court.

A scheme settled by the court for the administration of a charity can be altered by the court if the lapse of time and change of circumstances render it in the interest of the charity that the alteration should be made¹. Schemes so settled are not altered except upon substantial grounds, and upon clear evidence, not only that the existing scheme does not operate beneficially, but that it can be made to do so consistently with the object of the foundation². A scheme for applying the income of a charity remains in force only until further order or the establishment of a new scheme³.

If the trusts of a scheme settled by the court are later shown not to be charitable in law, the scheme must be corrected by a further scheme⁴. A scheme making an unfair distribution among the objects of a charity may be altered⁵.

1 *A-G v St John's Hospital, Bath* (1865) 1 Ch App 92 at 106 per Turner LJ; *Glasgow College v A-G* (1848) 1 HL Cas 800; and see *A-G v London Corp'n* (1790) 3 Bro CC 171; *A-G v Bovill* (1840) 1 Ph 762; *A-G v Rochester Corp'n* (1854) 5 De GM & G 797; *Re Hussey's Charities*, *Cheyne v Apreece*, *Symons v Delaval* (1861) 7 Jur NS 325 (where a gift to a clergyman for prisoners was divided on the formation of a second prison); *A-G v Hankey* (1867) LR 16 Eq 140n. As to the alteration of a scheme of a charity abroad see *A-G v London Corp'n* (1790) 3 Bro CC 171; *Lyons Corp'n v Advocate-General of Bengal* (1876) 1 App Cas 91 at 110, PC. As to the procedure for settling schemes see PARAS 613-615.

For special statutory provisions for the alteration of schemes affecting schools see eg the Education Act 1973 ss 1(2), 2 (repealed). Previously the Endowed Schools Acts 1869 to 1948 (repealed) (see PARA 183 note 6) had contained special provisions for the alteration of schemes. As to schemes under the Endowed Schools Acts and power to make new provision as to the use of endowments see the Education Act 1996 ss 553-556; and **EDUCATION** vol 15(2) (2006 Reissue) PARAS 1434-1435. As to rights of reverter see PARA 70.

2 *A-G v Bishop of Worcester* (1851) 9 Hare 328; and see *Re Sekeford's Charity* (1861) 5 LT 488; *A-G v Stewart* (1872) LR 14 Eq 17.

3 *Re Betton's Charity* [1908] 1 Ch 205.

4 See *Vernon v IRC* [1956] 3 All ER 14, [1956] 1 WLR 1169.

5 *A-G v Buller* (1822) Jac 407. Other types of provision which have been altered include those relating to religious instruction (*A-G v St John's Hospital, Bath* (1876) 2 ChD 554), the number of governors (*Re Browne's Hospital v Stamford* (1889) 60 LT 288), and the granting of building leases (*Re Henry Smith's Charity, Hartlepool* (1882) 20 ChD 516, CA).

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186. Court's powers where scheme not directed.

Where the matter is before the court, and it is not thought necessary to direct a scheme, the court may, as the case requires, refer the apportionment of funds to the master¹, or retain a measure of control by giving any of the parties leave to apply if necessary², or order the person applying the fund to account for its distribution³, or direct payment of the capital into court and payment of the dividends to the person entrusted with their distribution⁴.

1 *White v White* (1778) 1 Bro CC 12; *Re Hyde's Trusts* (1873) 22 WR 69.

2 *Waldo v Caley* (1809) 16 Ves 206 at 211 per Grant MR; *Horde v Earl of Suffolk* (1833) 2 My & K 59; *Re Lea, Lea v Cooke* (1887) 34 ChD 528 at 535 per North J.

3 *A-G v Glegg* (1738) Amb 584; *A-G v Governors etc of Sherborne Grammar School* (1854) 18 Beav 256.

4 *M'Coll v Atherton* (1848) 12 Jur 1042. As to where a scheme is not required see PARA 179.

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(iii) Settlement of Schemes by the Charity Commission

187. General jurisdiction.

The Charity Commission¹ may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes²: (1) establishing a scheme for the administration of a charity³; (2) appointing, discharging or removing a charity trustee⁴ or trustee for a charity, or removing an officer or employee⁵; (3) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment⁶.

In relation to a charity⁷ whose gross income does not in the aggregate exceed £500 a year⁸, the Commission may exercise its jurisdiction to make schemes on the application of any one or more of the charity trustees or of any person interested in the charity⁹ or, if it is a local charity¹⁰, of any two or more inhabitants of the area of the charity¹¹. In relation to any other charity, the Commission must not exercise its jurisdiction¹² to make schemes except on the application of the charity¹³ or on a reference to it by the court¹⁴ for the purpose¹⁵ or on the application of the Attorney General¹⁶.

Unless the scheme is made under a court order, the Commission must give notice of its intention to act to each of the charity trustees, except any that cannot be found or has no

known address in the United Kingdom¹⁷ or who is party or privy to the application for the exercise of the jurisdiction¹⁸.

The Commission does not have jurisdiction to try or determine the title in law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust¹⁹.

1 As to the Charity Commission see PARAS 538-572.

2 Charities Act 1993 s 16(1) (amended by the Charities Act 2006 Sch 8 para 109(2)). The Commission must not exercise its jurisdiction under the Charities Act 1993 s 16 in any case (not referred to it by order of the court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commission may consider more fit to be adjudicated on by the court: s 16(10) (amended by the Charities Act 2006 Sch 8 para 109(11)). Some of the guidance given to Charity Commission staff is set out in the *Report of the Charity Commissioners for England and Wales for 1989* (HC Paper (1989-90) no 343) paras 73-75. As to the jurisdiction of the courts in relation to charities see PARA 529 et seq.

3 Charities Act 1993 s 16(1)(a). As to the meaning of 'charity' see PARA 1. An appeal against an order by the Commission under s 16(1) lies to the Tribunal at the instance of the Attorney General, (in the case of s 16(1)(a)) the charity trustees of the charity to which the order relates or (if a body corporate) the charity itself, (in the case of s 16(1)(b)) any person discharged or removed by the order, or any other person who is or may be affected by the order: Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4). The Tribunal has the power to quash, substitute or amend the order: see the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (as so added).

4 As to the meaning of 'charity trustees' see PARA 1 note 10.

5 Charities Act 1993 s 16(1)(b).

6 Charities Act 1993 s 16(1)(c). A person guilty of disobedience to an order of the Commission under s 16 requiring a transfer of property or payment to be called for or made, may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court: see s 88; and PARA 551.

No vesting or transfer of any property in pursuance of any provision of Pts 4 (ss 13-35), 7 (ss 50-62) or 9 (ss 72-83) operates as a breach of a covenant or condition against alienation or give rise to a forfeiture: s 97(3) (amended by the Charities Act 2006 Sch 8 para 175). As from a day to be appointed the Charities Act 1993 s 97(3) is amended by the Charities Act 2006 Sch 8, para 175 to also relate to any provisions of the Charities Act 1993 Pt 8A (ss 69B-69Q). At the date at which this volume states the law no such day had been appointed.

7 Exempt charities are excluded from this provision: see the Charities Act 1993 s 16(5). However, as from a day to be appointed, this exclusion is repealed by the Charities Act 2006 Sch 5 para 4(3), Sch 9 para 1. At the date at which this volume states the law no such day had been appointed. As to exempt charities see PARAS 315-321.

8 If the Minister thinks it expedient to do so in consequence of changes in the value of money or with a view to increasing the number of charities in respect of which the Commission may exercise its jurisdiction under the Charities Act 1993 s 16 in accordance with s 16(5), he may by order amend that provision by substituting a different sum for the sum for the time being specified there: s 16(15) (amended by the Charities Act 2006 Sch 8 para 109(3); and SI 2006/2951). At the date at which this volume states the law no such orders had been made. As to the Minister see PARA 580.

9 As the meaning of 'interested in the charity' see PARA 587 note 4.

10 'Local charity' means, in relation to any area, a charity established for purposes which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of that area or of part of it: Charities Act 1993 s 96(1).

11 Charities Act 1993 s 16(5) (amended by the Charities Act 2006 Sch 5 para 4(3), Sch 8 para 109(6), Sch 9).

12 Charities Act 1993 s 16(4)(a) (amended by the Charities Act 2006 Sch 8 para 109(5)). See, however, PARAS 190, 193.

13 Charities Act 1993 s 16(4)(a). The application must be made by all or a majority of the charity trustees. Once an application has been made, it cannot effectively be withdrawn: *Re Poor's Lands Charity, Bethnal Green* [1891] 3 Ch 400.

14 Appeal on an order of the court under the Charities Act 1993 s 16(2): see PARA 189. As to ecclesiastical charities see also PARA 194.

15 See the Charities Act 1993 s 16(4)(b).

16 Charities Act 1993 s 16(4)(c). Exempt charities are excluded from this provision. However, as from a day to be appointed, this exclusion is repealed by the Charities Act 2006 Sch 5 para 4(2), Sch 9 para 1. As to exempt charities see PARAS 315-321

17 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

18 Charities Act 1993 s 16(9) (amended by the Charities Act 2006 Sch 8 para 109(10)). Notice may be given by post, addressed to the recipient's last known address in the United Kingdom: s 16(9).

19 Charities Act 1993 s 16(3) (amended by the Charities Act 2006 Sch 8 para 109(4)).

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188. Public notice.

The Charity Commission¹ may not make any order to establish a scheme for the administration of a charity, or submit such a scheme to the court² or the Minister³ for an order giving it effect, unless before doing so the Commission has complied with the statutory publicity requirements⁴.

The statutory publicity requirements are: (1) that the Commission must give public notice⁵ of its proposals inviting representations to be made to it within a period specified in the notice⁶; and (2) that in the case of a scheme relating to a local charity (other than an ecclesiastical charity) in a parish or in a community in Wales, the Commission must communicate a draft of the scheme to the parish or community council⁷. The time when any such notice is given or any such communication takes place is to be decided by the Commission⁸.

The Commission may determine that either or both of the statutory publicity requirements is or are not to apply in relation to a particular scheme if it is satisfied that by reason of the nature of the scheme, or for any other reason, compliance with the requirement or requirements is unnecessary⁹.

Where the Commission gives public notice of any proposals under these provisions, it must take into account any representations made to it within the period specified in the notice¹⁰ and may without further notice proceed with the proposals either without modifications or with such modifications as it thinks desirable¹¹.

Where the Commission makes an order¹² to establish a scheme for the administration of a charity, a copy of the order must be available, for at least a month after the order is published, for public inspection at all reasonable times at the Commission's office¹³ and, if the charity is a local charity, at some convenient place in the area of the charity¹⁴, save where the Commission is satisfied that for any reason it is unnecessary for a copy of the scheme to be available locally¹⁵.

1 As to the Charity Commission see PARAS 538-572.

- 2 As to the meaning of 'court' see PARA 175 note 12.
- 3 As to the Minister see PARA 580.
- 4 Charities Act 1993 s 20(1) (substituted by the Charities Act 2006 s 22).
- 5 'Public notice' is not defined but must contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and given in such manner as the Commission thinks sufficient and appropriate: Charities Act 1993 s 20(7) (as substituted: see note 4).
- 6 Charities Act 1993 s 20(2)(a) (as substituted: see note 4).
- 7 Charities Act 1993 s 20(2)(b) (as substituted: see note 4). Where a parish has no council, a draft of the scheme must be communicated to the chairman of the parish meeting: s 20(2)(b) (as so substituted). As to the meaning of 'local charity' see PARA 187 note 10. As to the meaning of 'ecclesiastical charity' see PARA 264 note 4.
- 8 Charities Act 1993 s 20(3) (as substituted: see note 4).
- 9 Charities Act 1993 s 20(4) (as substituted: see note 4).
- 10 Charities Act 1993 s 20(5)(a) (as substituted: see note 4).
- 11 Charities Act 1993 s 20(5)(b) (as substituted: see note 4).
- 12 ie an order under the Charities Act 1993.
- 13 Charities Act 1993 s 20(6)(a) (as substituted: see note 4). As to the supply of copies see PARA 304 note 15.
- 14 Charities Act 1993 s 20(6)(b) (as substituted: see note 4).
- 15 Charities Act 1993 s 20(6) (as substituted: see note 4).

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189. Schemes on reference by the court.

Where the court¹ directs a scheme for the administration of a charity² to be established, it may by order refer the matter to the Charity Commission³ for it to prepare or settle a scheme in accordance with such directions, if any, as the court sees fit to give⁴. Any such order may provide for the scheme to be put into effect by order of the Commission⁵ without any further court order⁶.

- 1 As to the meaning of 'court' see PARA 175 note 12.
- 2 As to the meaning of 'charity' see PARA 1.
- 3 As to the Charity Commission see PARAS 538-572.
- 4 Charities Act 1993 s 16(2) (amended by the Charities Act 2006 Sch 8 para 109(3)).
- 5 ie as if prepared under the Charities Act 1993 s 16(1): see PARA 187.
- 6 Charities Act 1993 s 16(2) (as amended: see note 4).

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190. Powers on trustees' refusal or inability to apply for scheme.

Where the Charity Commission¹ is satisfied with regard to any charity², other than an exempt charity³, that the charity trustees⁴ ought in the interests of the charity to apply for a scheme, but have unreasonably refused or neglected to do so, and the Commission has given the charity trustees an opportunity to make representations to them, the Commission may proceed as if an application for a scheme had been made by the charity⁵.

The purposes of a charity may not be altered under this provision unless 40 years have elapsed since the date of its foundation⁶.

Where a charity cannot apply to the Commission for a scheme by reason of any vacancy among the charity trustees or the absence or incapacity of any of them, but such an application is made by such number of the charity trustees as the Commission considers appropriate in the circumstances of the case, the Commission may nevertheless proceed as if the application were an application made by the charity⁷.

- 1 As to the Charity Commission see PARAS 538-572.
- 2 As to the meaning of 'charity' see PARA 1.
- 3 As to exempt charities see PARAS 315-321.
- 4 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 5 Charities Act 1993 s 16(6) (amended by the Charities Act 2006 Sch 8 para 109(7)).
- 6 Charities Act 1993 s 16(6) (as amended: see note 5).
- 7 Charities Act 1993 s 16(7) (amended by the Charities Act 2006 Sch 8 para 109(8)).

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191. Schemes amending statutory provisions.

Where it appears to the Charity Commission¹ that a scheme for the administration of a charity² should be established, but also that it is necessary or desirable for the scheme to alter some statutory provision establishing or regulating the charity or to make some other provision which is beyond the Commission's normal powers, or where it appears to the Commission that it is for any reason proper for the scheme to be subject to parliamentary review, it may settle a scheme³, and effect may be given to it by an order of the Minister⁴. Where the scheme goes beyond the powers otherwise exercisable in altering the provisions of a public general Act, the order may not be made unless the draft is approved by resolution of each House of Parliament⁵. Any provision of a scheme brought into effect under this procedure may be modified or superseded by the court⁶ or the Commission as if it were a scheme brought into effect by order of the Commission⁷ in the exercise of its ordinary powers⁸.

The Commission must not proceed under these provisions without the like application, and the like notice to the charity trustees⁹, as would be required if it was proceeding (without an order

of the court) under its ordinary jurisdiction¹⁰; but on any application for a scheme, or in a case where it acts because the charity trustees have unreasonably refused or neglected to act¹¹, or are unable to do so¹², it may proceed under these provisions or under its ordinary powers¹³, as appears to it to be appropriate¹⁴.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'charity' see PARA 1.

3 Charities Act 1993 s 17(1) (amended by the Charities Act 2006 Sch 8 para 110(2)).

4 Charities Act 1993 s 17(2) (amended by the Charities Act 2006 Sch 8 para 110(3); and SI 2006/2951). As to the Minister see PARA 580. Such orders of the Minister must be made by statutory instrument: see the Charities Act 1993 s 86(1)(a) (amended by SI 2006/2951 Sch 1 para 4). For examples of orders that have been made see the Charities (The Hundred Acres Charity, Enfield) Order 1974, SI 1974/1839; the Charities (National Trust for Places of Historic Interest or Natural Beauty) Order 1975, SI 1975/1155; the Charities (The Marine Society) Order 1976, SI 1976/147; the Charities (Cheltenham College) Order 1976, SI 1976/1809; the Charities (The New College of Cobham) Order 1978, SI 1978/1155; the Charities (Booth Charities) Order 1985, SI 1985/1935; the Charities (William Lambe (London) Trust) Order 1986, SI 1986/2003; the Charities (University of Liverpool) Order 1988, SI 1988/1068; the Charities (Borough Lands Charity, Chippenham) Order 1990, SI 1990/843; the Charities (Royal Russell School) Order 1998, SI 1998/2883; the Charities (Seamen's Hospital Society) Order 1999, SI 1999/73; the Charities (The Royal Philanthropic Society) Order 1994, SI 1994/1235; the Charities (The Bridge House Estates) Order 1995, SI 1995/1047; the Charities (The Royal School for the Blind) Order 1996, SI 1996/1667; the Charities (The Shrubbery) Order 2003, SI 2003/1688; the Charities (Alexandra Park and Palace) Order 2004, SI 2004/160; the Charities (National Trust) Order 2005, SI 2005/712; the Charities (Bridge House Estates) Order 2007, SI 2007/550. Formerly a special Act was necessary; now expenditure of charity money on promoting legislation is restricted by the Charities Act 1993 s 17(7) (see PARA 328). Exempt charities are excluded from this provision, however, as from a day to be appointed this exclusion is repealed by the Charities Act 2006 Sch 5 para 5, Sch 9 para 1. At the date at which this volume states the law no such day had been appointed. As to exempt charities see PARAS 315-322.

5 Charities Act 1993 s 17(3). This provision is expressed to be subject to the operation of the Statutory Instruments Act 1946 s 6 (see **STATUTES** vol 44(1) (Reissue) PARA 1517): see the Charities Act 1993 s 17(3).

6 As to the meaning of 'court' see PARA 175 note 12.

7 I.e. under the Charities Act 1993 s 16: see PARAS 187, 189-190, 295.

8 Charities Act 1993 s 17(4) (amended by the Charities Act 2006 Sch 8 para 110(4)). However, where a scheme requires the positive approval of Parliament (see the text to note 6), the order giving effect to it may direct that the scheme must not be modified or superseded by a scheme brought into effect otherwise than under the Charities Act 1993 s 17, and may also direct that any modifying or superseding scheme is subject to the same limitation: see s 17(5).

9 As to the meaning of 'charity trustees' see PARA 1 note 10.

10 See note 8.

11 See the Charities Act 1993 s 16(6); and PARA 190.

12 See the Charities Act 1993 s 16(7); and PARA 190.

13 See note 8.

14 Charities Act 1993 s 17(6) (amended by the Charities Act 2006 Sch 8 para 110(5)).

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192. Interim order in lieu of scheme.

If the Charity Commission¹ is satisfied: (1) that in existing circumstances the whole of the income of a charity cannot be effectively applied for the purposes of the charity²; and (2) that if those circumstances continue a scheme might be made for applying the surplus cy-près³; and (3) that for any reason it is not yet desirable to make such a scheme⁴, it may by order authorise the charity trustees⁵ at their discretion, though subject to any conditions imposed by the order, to apply accrued or accruing income⁶ for any purposes for which it might be made applicable by such a scheme⁷. Any application authorised by the order is deemed to be within the purposes of the charity⁸.

1 As to the Charity Commission see PARAS 538-572.

2 Charities Act 1993 s 17(8)(a). As to the meaning of 'charity' see PARA 1.

3 Charities Act 1993 s 17(8)(b).

4 Charities Act 1993 s 17(8)(c).

5 As to the meaning of 'charity trustees' see PARA 1 note 10.

6 The order may not, however, extend to more than £300 out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than £100 out of the income accruing in any of those three years: Charities Act 1993 s 17(9).

7 Charities Act 1993 s 17(8) (amended by the Charities Act 2006 Sch 8 para 110(7)).

8 Charities Act 1993 s 17(8) (as amended: see note 7).

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193. Special jurisdiction.

There may be special cases in which, by virtue of some statutory provision, the Charity Commission¹ has jurisdiction to modify schemes that the court cannot modify².

Provisions with respect to allotments for recreation grounds, field gardens or other public or parochial purposes contained in any Inclosure Act, award or order made thereunder, and any provisions with respect to the management of any such allotments contained in any such Act, order, or award, may, on the application of any district or parish council interested in the allotment, be dealt with by a scheme of the Charity Commission in the exercise of its ordinary jurisdiction as if the provisions had been established by the founder in the case of a charity having a founder³.

Any employee organisation⁴ in the coal industry where members or members and their dependants constitute a substantial proportion of the beneficiaries under a relevant trust⁵ and where neither the organisation nor its members are entitled to appoint any of the trustees of that trust, may apply to the Charity Commission for a scheme making such amendments to the provisions regulating the trust as the Commission considers appropriate for the purpose of securing fair representation amongst the trustees of those persons employed in the coal industry who may benefit under the trust⁶. These provisions apply to any trust for purposes which are exclusively charitable: (1) which is a trust of property wholly or partly representing an application of money from the miners' welfare fund constituted under the Mining Industry Act 1920⁷ or the body known as the Coal Industry Social Welfare Organisation⁸; (2) which is a trust expressed to be for the benefit of (a) persons currently or formerly employed in the coal industry or any class of such persons or their dependants⁹; or (b) members of the mining

community in general or of the mining community of a particular area, whether or not any other persons are also beneficiaries¹⁰; or (3) under the terms of which all or a majority of the trustees are appointed by the body mentioned in head (1) above or are appointed by the Coal Authority and an employee organisation¹¹.

1 As to the Charity Commission see **PARAS 538-572**.

2 See eg *Trustees of the London Parochial Charities v A-G* [1955] 1 All ER 1, [1955] 1 WLR 42. The Charities Act 1993 s 17 (see **PARAS 191-192**) provides for a similar situation.

3 Commons Act 1899 s 18 (amended by the Charities Act 2006 Sch 8 para 10). For the purposes of the Commons Act 1899 s 18 the Broads Authority is treated as a district council: s 18 (amended by the Norfolk and Suffolk Broads Act 1988 Sch 6 para 1). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734. As to field gardens see **AGRICULTURAL LAND** vol 1 (2008) PARA 512.

A national park authority has the same power to make an application under the Commons Act 1899 s 18 as a local authority: Environment Act 1995 s 70, Sch 9 para 1(4). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 For these purposes, 'employee organisation' means any organisation appearing to the Charity Commission to represent in respect of their employment a substantial number of persons whose employers are licensed operators within the meaning of the Coal Industry Act 1994, or who are all employed by the same licensed operator: Coal Industry Act 1987 s 5(4) (as substituted and amended: see note 5).

5 Ie a trust to which the Coal Industry Act 1987 s 5 (amended by the Coal Industry Act 1994 s 67, Sch 9 para 36(b); and the Charities Act 2006 Sch 8 para 80, Sch 10 para 18) applies: see the text and notes 8-11.

6 Coal Industry Act 1987 s 5(1) (amended by the Charities Act 2006 Sch 8 para 80(2)). See also **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 88.

7 Ie the Mining Industry Act 1920 s 20 (repealed).

8 Coal Industry Act 1987 s 5(3)(a). As to provisions relating to the Coal Industry Social Welfare Organisation see the Miners' Welfare Act 1952 s 12 (prospectively repealed); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.

9 Coal Industry Act 1987 s 5(3)(b)(i).

10 Coal Industry Act 1987 s 5(3)(b)(ii).

11 Coal Industry Act 1987 s 5(3)(c). The statutory wording refers to the British Coal Corporation, however this has been replaced by the Coal Authority see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 50 et seq.

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194. Schemes in relation to ecclesiastical charities.

The definition of 'charity' in the Charities Act 1993¹ does not apply to any ecclesiastical corporation² in respect of the corporate property of the corporation³ or to any trust of property for purposes for which the property has been consecrated⁴. Nor is it applicable to any diocesan board of finance (or any subsidiary thereof) within the meaning of the Endowments and Glebe Measure 1976 for any diocese in respect of the diocesan glebe land of that diocese within the meaning of that Measure⁵. This notwithstanding, the power of the court⁶ to make schemes in its charity jurisdiction, and the Charity Commission's jurisdiction to make schemes⁷, extend to the making of schemes with respect to consecrated chapels belonging to charities⁸ which are no longer needed for the purposes of the charity⁹. Such schemes may provide for the demolition of

the chapel or disposal of the material arising from the demolition, for the sale or other disposal of the chapel or site of it and the application of the proceeds, for its appropriation to such uses as may be specified or generally described in the scheme, and for supplementary and incidental matters¹⁰.

In relation to a charity established for ecclesiastical purposes of the Church of England, being a charity whose administration or purposes are affected by a pastoral scheme or order¹¹, the Charity Commission's powers to make schemes¹² may be exercised on the application of the diocesan board of finance for the relevant diocese¹³. This power also extends to charities affected by a pastoral (church buildings disposal) scheme under the Pastoral Measure 1983¹⁴.

Nothing in the New Parishes Measure 1943 enables the Church Commissioners¹⁵ to deal with the endowment of a charity within the meaning of the Charities Act 1993 without the consent of the Charity Commission¹⁶.

1 See the Charities Act 1993 s 96(1); and PARA 1.

2 Ie any corporation in the Church of England, whether sole or aggregate, which is established for spiritual purposes: Charities Act 1993 s 96(2)(a). As to ecclesiastical matters see further **ECCLESIASTICAL LAW**.

3 Charities Act 1993 s 96(2)(a). However, in respect of a corporation aggregate having some non-ecclesiastical purposes, the definition of 'charity' does extend to its corporate property held for those purposes: see s 96(2)(a).

4 See the Charities Act 1993 s 96(2)(c).

5 Charities Act 1993 s 96(2)(b) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 s 11). As to diocesan boards of finance see **ECCLESIASTICAL LAW** vol 14 PARAS 517-518.

6 Ie under the Charities Act 1993: see PARA 181 et seq.

7 Ie under the Charities Act 1993 s 16: see PARA 187. As to the Charity Commission see PARAS 538-572.

8 For these purposes, a consecrated chapel held on charitable trusts for the purpose of religious worship by the beneficiaries and staff of a charity and not by the general public is deemed to belong to that charity, notwithstanding that the trusts on which the chapel is held are separate from those of the charity, but this does not apply to a chapel held on separate trusts relating to the use thereof for religious worship: Pastoral Measure 1983 s 55(4). As to the meaning of 'charity' see PARA 1; definition applied by s 87(1) (amended by the Charities Act 1993 Sch 6 para 18(4)).

9 Pastoral Measure 1983 s 55(1) (amended by the Charities Act 1993 Sch 6 para 18(1), (2); and the Charities Act 2006 Sch 8 para 69). Where a scheme is made under the Pastoral Measure 1983, the bishop may, if he thinks it proper to do so, by order under his seal direct that s 61(1) and s 65, if applicable, apply to the chapel as they apply to the buildings mentioned in those provisions, and those provisions then apply accordingly: s 55(2). The scheme, so far as it relates to the chapel, does not have effect unless and until such an order is made, or the bishop directs that the scheme may have effect without such an order: s 55(2). 'Bishop' means the bishop of the diocese concerned: s 87(1).

10 Pastoral Measure 1983 s 55(3).

11 As to such schemes and orders see the Pastoral Measure 1983; and **ECCLESIASTICAL LAW**.

12 Ie under the Charities Act 1993 s 16: see PARA 187.

13 Pastoral Measure 1983 s 40, Sch 3 para 11(6) (amended by the Charities Act 1993 Sch 6 para 18(5); and the Charities Act 2006 Sch 8 para 72). They may also be exercised on the application of any of the persons specified in the Charities Act 1993 s 16 (see PARA 187): Pastoral Measure 1983 Sch 3 para 11(6) (as so amended). Any schemes or orders made by the Charity Commission for purposes arising in connection with a pastoral scheme or order may be made before the date on which the pastoral scheme or order comes into operation, but not so as to take effect before that date: Sch 3 para 11(7) (amended by the Charities Act 2006 Sch 8 para 72).

14 Previously a 'redundancy scheme': see Pastoral Measure 1983 s 63(3) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 62(6)); and **ECCLESIASTICAL LAW**.

15 As to the Church Commissioners see **ECCLESIASTICAL LAW** vol 14 PARA 363 et seq.

16 New Parishes Measure 1943 s 31 (amended by the Charities Act 1960 s 48, Sch 6; the Education Act 1973 s 1(4), (5), Sch 2 Pt III; the Charities Act 1993 Sch 6 para 3(4); and the Charities Act 2006 Sch 8 para 31). The repeal of the Charities Act 1960 by the Charities Act 2006 Sch 8 para 83(3) does not affect the amendments made by that Act: Charities Act 2006 Sch 10 para 23.

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195. Schemes in relation to redundant places of worship.

Statutory provision is made with respect to the transfer of certain redundant places of worship¹. These provisions apply in relation to any premises² if the premises are held by or in trust for a charity (the 'relevant charity'), and the whole or part of the premises has been used as a place of public worship, but the premises are not a church subject to the provisions of the Pastoral Measure 1983³.

If the court⁴ is satisfied, with respect to any relevant premises: (1) that those premises are no longer required, whether wholly or in part, for use as a place of public worship⁵; and (2) that either the Secretary of State or the Welsh Ministers, the Historic Buildings and Monuments Commission of England, or a prescribed charity, is willing to enter into an agreement to acquire those premises by way of gift or for a consideration other than full consideration⁶; but (3) that it is not within the powers of the persons in whom those premises are vested to carry out such an agreement except by virtue of these provisions⁷, it may, under its jurisdiction with respect to charities, establish a scheme for the making and carrying out of such an agreement⁸. The Charity Commission has the same jurisdiction and powers in relation to the establishment of such a scheme⁹.

If it appears to the court proper to do so, such a scheme may provide for the acquirer of the relevant premises¹⁰ also to acquire (whether by gift or for a consideration other than full consideration or otherwise) any land held by or in trust for the relevant charity which is contiguous or adjacent to those premises and any objects which are or have been ordinarily kept on those premises¹¹. The scheme may also provide for conferring on the acquirer of the relevant premises: (a) such rights of way over any land held by or in trust for the relevant charity as appear to the court to be necessary for the purpose of the discharge of the acquirer's functions in relation to those premises or to any land acquired under the scheme, or for giving to the public reasonable access to those premises or to any such land¹²; and (b) so far as is necessary for the purpose of the discharge of such functions or the giving of such access, any rights of way enjoyed by persons attending services at those premises¹³.

The Charity Commission may, on the application of the acquirer of the relevant premises, by order establish a scheme¹⁴ making provision for the restoration of the relevant premises, or part of them, to use as a place of public worship¹⁵. The Charity Commission may so establish any such scheme notwithstanding the limit on jurisdiction to make schemes for the protection of charities¹⁶ or that the relevant charity has ceased to exist, and if the relevant charity has ceased to exist, any such scheme may provide for the constitution of a charity by or in trust for which the relevant premises are to be held on the restoration of those premises, or part of them, to use as a place of public worship¹⁷.

Where any relevant premises are acquired by the Secretary of State or the Welsh Ministers, the Historic Buildings and Monuments Commission of England or a prescribed charity, any property of a charity whose purposes include (i) the repair and maintenance of those premises¹⁸; or (ii) the provision of objects for keeping on those premises¹⁹; or (iii) the maintenance of objects

ordinarily kept there²⁰, continues to be applicable for that purpose so long as the premises remain vested in the Secretary of State or the Welsh Ministers, the Commission or the prescribed charity, as the case may be²¹.

1 See the Redundant Churches and Other Religious Buildings Act 1969 ss 4, 5; and **ECCLESIASTICAL LAW** vol 14 PARA 1134.

2 'Premises' includes a part of a building: Redundant Churches and Other Religious Buildings Act 1969 s 4(13) (s 4 substituted by the Charities Act 1992 Sch 5 para 1).

3 Redundant Churches and Other Religious Buildings Act 1969 s 4(1) (as substituted: see note 2). In relation to the Historic Buildings and Monuments Commission of England, the Redundant Churches and Other Religious Buildings Act 1969 s 4 only applies to any premises falling within s 4(1) if they are situated in England, and references in s 4 to land are references only to land situated in England: s 4(9) (as so substituted). In relation to a prescribed charity, s 4 only applies to any premises falling within s 4(1) if they constitute either a listed building within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990, or a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1010): Redundant Churches and Other Religious Buildings Act 1969 s 4(10) (as so substituted). The Secretary of State or the Welsh Ministers may direct that any charity specified in the direction is a prescribed charity for these purposes; and any such direction may be varied or revoked by a further direction given by the Secretary of State or the Welsh Ministers: s 4(11) (as so substituted). As to the Secretary of State and the Welsh Ministers see PARA 579. As to the Historic Buildings and Monuments Commission for England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803 et seq.

4 As to the meaning of 'court' see PARA 175 note 12; definition applied by the Redundant Churches and Other Religious Buildings Act 1969 s 4(13) (as substituted (see note 3)); and s 4(6), (7), (8), (13) (as substituted and amended by the Charities Act 1993 Sch 6 para 10 and the Charities Act 2006 Sch 8 para 51). As to the court's jurisdiction over charities see PARA 529 et seq.

5 Redundant Churches and Other Religious Buildings Act 1969 s 4(2)(a) (as substituted: see note 3).

6 Redundant Churches and Other Religious Buildings Act 1969 s 4(2)(b) (as substituted: see note 3). For the purposes of s 4(2), (3), in relation to the acquisition of the relevant premises or the acquisition of any land or object: (1) references to acquisition by the Secretary of State are references to acquisition by him under the Historic Buildings and Ancient Monuments Act 1953 s 5 (acquisition by him of buildings of historic or architectural interest) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1063); and (2) references to acquisition by the Historic Buildings and Monuments Commission for England are references to acquisition by them under s 5A (acquisition by them of buildings of historic or architectural interest) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1064): Redundant Churches and Other Religious Buildings Act 1969 s 4(4) (as so substituted).

7 Redundant Churches and Other Religious Buildings Act 1969 s 4(2)(c) (as substituted: see note 3).

8 Redundant Churches and Other Religious Buildings Act 1969 s 4(2) (as substituted: see note 3).

9 The Charity Commission has the same jurisdiction and powers in relation to the establishment of a scheme under the Redundant Churches and Other Religious Buildings Act 1969 s 4(2) as it has under the provisions of the Charities Act 1993 s 16 (except s 16(6)) (see PARAS 187, 189-190, 295) in relation to the establishment of a scheme for the administration of a charity; and s 20 (publicity for proceedings under s 16) (see PARAS 188, 294, 567) accordingly has effect in relation to the establishment of a scheme under the Redundant Churches and Other Religious Buildings Act 1969 s 4(2) as it has effect in relation to the establishment of a scheme for the administration of a charity: s 4(8) (as so substituted; and as amended: see note 4). As to the Charity Commission see PARAS 538-572. The Charities Act 1993 Sch 1C (see PARA 204) applies in relation to an order made by virtue of the Redundant Churches and other Religious Buildings Act 1969 s 4(8) as it applies in relation to an order made under the Charities Act 1993 s 16(1) (see PARA 187): Redundant Churches and other Religious Buildings Act 1969 s 4(8A) (added by the Charities Act 2006 Sch 8 para 51(5)).

10 For these purposes, references to the acquirer of the relevant premises are references to the person or body acquiring those premises by virtue of a scheme established under the Redundant Churches and other Religious Buildings Act 1969 s 4(2): s 4(12) (as substituted: see note 2).

11 Redundant Churches and other Religious Buildings Act 1969 s 4(3) (as substituted: see note 2).

12 Redundant Churches and other Religious Buildings Act 1969 s 4(5)(a) (as substituted: see note 2).

13 Redundant Churches and other Religious Buildings Act 1969 s 4(5)(b) (as substituted: see note 2).

14 lie under the provisions relating to the Commission's concurrent jurisdiction with the High Court for certain purposes: see the Charities Act 1993 s 16; and PARAS 187, 189-190, 295.

15 Redundant Churches and Other Religious Buildings Act 1969 s 4(6) (as substituted (see note 2); and as amended (see note 4)).

16 lie under the Charities Act 1993 s 16(4): see PARA 187.

17 Redundant Churches and Other Religious Buildings Act 1969 s 4(7) (as substituted (see note 2); and as amended (see note 4)).

18 Redundant Churches and other Religious Buildings Act 1969 s 5(1)(a) (s 5 substituted by the Charities Act 1992 Sch 5 para 2).

19 Redundant Churches and Other Religious Buildings Act 1969 s 5(1)(b) (as substituted: see note 18).

20 Redundant Churches and Other Religious Buildings Act 1969 s 5(1)(c) (as substituted: see note 18).

21 Redundant Churches and Other Religious Buildings Act 1969 s 5(1) (as substituted: see note 18). If so provided by the scheme under which the agreement for the acquisition of any such premises is made, s 5(1) has effect in relation to the premises subject to and in accordance with any specified provisions of the scheme: s 5(2) (as so substituted).

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196. Schemes in relation to reserve forces charities.

Statutory provision is made for the treatment of charitable property held for purposes of any body of a reserve force which has been, or is to be, disbanded or amalgamated with another body¹.

A warrant of Her Majesty may designate² any unit of a reserve force³ as the successor to any unit or other body of the same or any other reserve force which has been or is to be disbanded⁴. The Secretary of State⁵ must send a copy of any such warrant to the Charity Commission⁶, the Department of Health and Social Services for Northern Ireland, and a trustee of each charity⁷ in England and Wales or Northern Ireland, or a person concerned in the management or control of each recognised body⁸, affected by the warrant⁹.

The effect of designating the successor to a disbanded unit is that on and after the day on which a warrant comes into force, any charitable property¹⁰ which is held for the purposes of the disbanded unit in question is to be held for the corresponding purposes, or most nearly corresponding purposes, of the successor unit designated by the warrant¹¹. If the Charity Commission considers that this effect¹² should not apply to all or any of the charitable property held for the purposes of a disbanded unit, it may make an order¹³ providing that it does not apply or ceases to apply to that property or part¹⁴. If a charity affected by a warrant or any trustee of, or person interested in, such a charity considers that this effect¹⁵ should not apply to all or any of the property held by the charity for the purposes of the disbanded unit in question, then the charity, trustee or person interested, as the case may be, may apply to the court¹⁶ for an order providing that it will cease to apply to that property or part¹⁷.

In any case where: (1) the Secretary of State requests the Charity Commission to make provision with respect to any charitable property which is held for the purposes of a unit of a reserve force that has been or is to be disbanded¹⁸; or (2) an order is made as to the exclusion of charitable property from the effect of designation of a successor to the disbanded unit¹⁹ the Commission may, notwithstanding the limit on jurisdiction to make schemes for the protection

of charities²⁰, exercise such jurisdiction with respect to the property to which the request or order relates²¹.

These provisions²² do not apply to any property held by a charity for the purposes of a unit that has been or is to be disbanded if, under the terms on which the property is so held²³: (a) any interest of the charity in the property is determined on the disbanding of that unit²⁴; and (b) any other person or charity has an interest in the property contingent upon the determination of the interest of the charity²⁵.

1 See the Reserve Forces Act 1996 s 120. As to the succession to charitable property in relation to Scotland see s 120, Sch 5 Pt III paras 9-14 (amended by virtue of SI 1999/678). As to the succession to charitable property in relation to Northern Ireland see the Reserve Forces Act 1996 Sch 5 Pt IV paras 15-20. See also **ARMED FORCES**.

2 'Warrant' means a warrant making such a designation: Reserve Forces Act 1996 Sch 5 para 2.

3 'Reserve forces' means the following forces: (1) the Royal Fleet Reserve, the Royal Naval Reserve and the Royal Marines Reserve; (2) the Army Reserve and the Territorial Army; and (3) the Air Force Reserve and the Royal Auxiliary Air Force: Reserve Forces Act 1996 s 1(2). Any reference in the Reserve Forces Act 1996 to a reserve force, to two or more of the reserve forces or to all the reserve forces is, unless the context otherwise requires, to be construed as a reference to the whole of the force, or of each force, concerned, including any transitional members: s 129, Sch 9 para 7(1). See **ARMED FORCES**.

4 Reserve Forces Act 1996 Sch 5 para 1(1). 'Disbanded unit' means a unit for which a successor is designated under Sch 5 para 1: Sch 5 para 2. References to disbandment of a body of a reserve force (however expressed) include references to its amalgamation with another unit or body: Sch 5 para 2.

5 As to the Secretary of State see PARA 579.

6 As to the Charity Commission see PARAS 538-572.

7 As to the meaning of 'charity' see PARA 1; definition applied by the Reserve Forces Act 1996 Sch 5 para 2.

8 'Recognised body' has the same meaning as in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 Pt I: Reserve Forces Act 1996 Sch 5 para 2.

9 Reserve Forces Act 1996 Sch 5 para 1(2) (amended by SI 1999/678; and the Charities Act 2006 Sch 8 para 181(2)). A copy of such a warrant may be sent by post; and any such copy must be sent so as to arrive on or before the day on which the warrant comes into force and, in any event, not more than 14 days from the day on which the warrant is made: Reserve Forces Act 1996 Sch 5 para 1(3).

10 For these purposes, 'charitable property' means any property belonging to a charity: Reserve Forces Act 1996 Sch 5 para 3(2).

11 Reserve Forces Act 1996 Sch 5 para 3(1). The same jurisdiction and powers are exercisable in relation to any charity owning property to which Sch 4 para 3(1) applies as would be exercisable if that were not a provision of an Act of Parliament regulating that charity: Sch 5 para 3(3).

12 Ie the effect of the Reserve Forces Act 1996 Sch 5 para 3(1): see the text and notes 10-11.

13 Any such order may be made at any time within the period of six months beginning with the day on which the warrant is made: Reserve Forces Act 1996 Sch 5 para 4(2).

14 Reserve Forces Act 1996 Sch 5 para 4(1) (amended by the Charities Act 2006 Sch 8 para 181(3)). Neither a warrant nor any order under the Reserve Forces Act 1996 Sch 5 para 4 or Sch 5 para 5 (see the text and notes 15-17) affects the validity of anything done or omitted with respect to any property affected by the warrant or order before a copy of the warrant or order is received by a trustee of the charity in question: Sch 5 para 7.

15 See note 12.

16 For meaning of 'court' for these purposes see PARA 175 note 12; definition applied by the Reserve Forces Act 1996 Sch 5 para 5(3).

17 Reserve Forces Act 1996 Sch 5 para 5(1). Such an application (1) may be made at any time within the period of six months beginning with the day on which the warrant comes into force; and (2) is subject to the

Charities Act 1993 s 33(2)-(5) (proceedings not to be begun without the consent of the Charity Commission or leave of a judge of the High Court) (see PARA 588), and for the purposes of s 33(5) an application for an order of the Commission authorising proceedings under the Reserve Forces Act 1996 Sch 5 para 5 is deemed to be refused if it is not granted during the period of one month beginning with the day on which the application is received by the Commission: Sch 5 para 5(2) (amended by the Charities Act 2006 Sch 8 para 181(4)). See also note 14.

18 Reserve Forces Act 1996 Sch 5 para 6(a) (amended by the Charities Act 2006 Sch 8 para 181(5)).

19 Reserve Forces Act 1996 Sch 5 para 6(b) (amended by the Charities Act 2006 Sch 8 para 181(5)). The reference in the text to an order is a reference to an order made under Sch 5 para 4 or Sch 5 para 5 (see the text and notes 12-17) excluding any charitable property from the operation of Sch 5 para 3(1) (see the text and notes 10-11): see Sch 5 para 6(b).

20 Ie under the Charities Act 1993 s 16(4): see PARA 187.

21 Reserve Forces Act 1996 Sch 5 para 6.

22 Ie the Reserve Forces Act 1996 Sch 5 paras 3-7: see the text and notes 10-21.

23 Reserve Forces Act 1996 Sch 5 para 8.

24 Reserve Forces Act 1996 Sch 5 para 8(a).

25 Reserve Forces Act 1996 Sch 5 para 8(b).

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(iv) Appeals

197. Right of appeal to the Tribunal from orders of Charity Commission.

Where the Charity Commission¹ by an order made on or after 18 March 2008² exercises the same jurisdiction and powers as are exercisable by the High Court in charity proceedings³, an appeal against any such order may be brought to the Tribunal⁴ by the Attorney General⁵. Such an appeal may also be brought to the Tribunal by the charity trustees or (if a body corporate) the charity itself in the case of a scheme for the administration of the charity⁶, or by any person discharged or removed by the order⁷, or by any other person who is or may be affected by the order⁸.

The Tribunal has the power to do any of the following: (1) quash the order in whole or in part and, if appropriate, remit the matter to the Commission; (2) substitute for all or part of the order any other order which could have been made by the Commission; (3) add to the order anything which could have been contained in an order made by the Commission⁹.

1 As to the Charity Commission see PARAS 538-572.

2 As to orders made before this date see PARA 198.

3 Ie under the Charities Act 1993 s 16(1): see PARA 187.

4 As to the Tribunal see PARA 573 et seq.

5 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2)(a), Table Col 1 (s 2A and Sch 1C added by the Charities Act 2006 s 8(1), (3), Sch 4).

6 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2)(b), Table Col 2 (as added: see note 5).

7 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2)(b), Table Col 2 (as added: see note 5).

8 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2)(b), Table Col 2 (as added: see note 5).

9 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (as added: see note 5).

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198. Orders made before 18 March 2008.

Where the Charity Commission by an order made before 18 March 2008¹ exercises the same jurisdiction and powers as are exercisable by the High Court in charity proceedings², an appeal against any such order may be brought in the High Court by the Attorney General³. Such an appeal may also, at any time within three months beginning with the day following that on which the order is published⁴, be brought in the High Court by the charity⁵, or any of the charity trustees⁶, or by any person removed⁷ from any office or employment by the order⁸. Where such an order of the Commission establishes a scheme for the administration of a charity, any person interested in the charity⁹ has the like right of appeal as a charity trustee, and so have, in the case of a charity which is a local charity¹⁰ in any area, any two or more inhabitants of the area and the council of any parish or, in Wales, any community comprising the area or any part of it¹¹.

In any such case except that of an appeal by the Attorney General, no appeal may be brought except with a certificate of the Commission that it is a proper case for an appeal, or with the leave of one of the judges of the High Court attached to the Chancery Division¹².

Apart from cases in which, by reason of lapse of time and changed circumstances, the provisions of a scheme are no longer practicable¹³, the court will only interfere with a scheme settled by the Charity Commission¹⁴ where it has acted *ultra vires* or the scheme contains something wrong in principle¹⁵.

1 Or, in the case of an order made before 27 February 2007, the Charity Commissioners: Charities Act 1993 s 1 (repealed). As to the Charity Commission see PARAS 538-572. As to the Charity Commissioners see PARA 538. The repeal of the Charities Act 1993 s 16(11)-(14) by the Charities Act 2006 Sch 8 para 109, Sch 9 does not affect the operation of the Charities Act 1993 in relation to any appeal brought in the High Court before 18 March 2008 (ie the day on which the repeals came into force): see the Charities Act 2006 Sch 10 para 18; and the Charities Act 2006 (Commencement No 3, Transitional Provisions and Savings) Order 2008, SI 2008/751, art 4(1)).

2 Ie under the Charities Act 1993 s 16(1): see PARA 187.

3 Charities Act 1993 s 16(11) (repealed subject to savings: see note 1).

4 As to the requirement of public notice see PARA 188; and cf *Re Diptford Parish Lands* [1934] Ch 151.

5 As to the meaning of 'charity' see PARA 1.

6 As to the meaning of 'charity trustees' see PARA 1 note 10.

7 Ie unless he is removed with the concurrence of the charity trustees or with the approval of the special visitor, if any, of the charity: see the Charities Act 1993 s 16(12) (repealed subject to savings: see note 1).

8 Charities Act 1993 s 16(12) (repealed subject to savings: see note 1).

9 As the meaning of 'person interested in a charity' see PARA 587 note 4.

10 As to the meaning of 'local charity' see PARA 187 note 10.

11 Charities Act 1993 s 16(14) (repealed subject to savings: see note 1).

12 Charities Act 1993 s 16(13) (repealed subject to savings: see note 1). Requiring a certificate or leave applies equally to an appeal brought under s 16(12) and to one brought under s 16(14): *Childs v A-G* [1973] 2 All ER 108, [1973] 1 WLR 497 (on the corresponding provisions of the Charities Act 1960 (repealed)). As to the procedure on an appeal see PARA 616.

13 As to the alteration of schemes settled by court in these circumstances see PARA 185.

14 As to the Charity Commission see PARAS 538-572.

15 *Re Campden Charities* (1881) 18 ChD 310, CA; *Re Campden Charities (No 2)* (1883) 24 ChD 213; *Re Weir Hospital* [1910] 2 Ch 124 at 134, CA, per Cozens-Hardy MR. See also *Re Shaftoe's Charity* (1878) 3 App Cas 872, PC; *Re Sutton Coldfield Grammar School* (1881) 7 App Cas 91, PC; *Re Faraker, Faraker v Durell* [1912] 2 Ch 488, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/199. Particular purpose not defined.

(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE

199. Particular purpose not defined.

Where the mode of executing a charitable gift is originally undefined, it is impossible, of course, to select an object cy-près to that which has failed¹. However, the donor's intention will be carried out as far as possible by the application of the gift to charitable objects to be nominated by the Crown, the court² or the Charity Commission³, as the case may be.

1 *Barclay v Maskelyne* (1858) 4 Jur NS 1294 at 1297 per Wood V-C.

2 *White v White* (1778) 1 Bro CC 12; *Mills v Farmer* (1815) 1 Mer 55 at 96, 102 per Lord Eldon LC. As to the nomination of charitable objects by the Crown or the court see PARAS 509, 529. Whether the selection of objects is by the Crown or the court, the same principles apply: *Moggridge v Thackwell* (1803) 7 Ves 36 at 87 per Lord Eldon LC; *A-G v Wansay* (1808) 15 Ves 231 at 233 per Lord Eldon LC; *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236 at 243, CA, per Kay LJ.

3 See the Charities Act 1993 s 16; and PARAS 187, 189-190, 295. As to the Charity Commission see PARAS 538-572.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/200. Indications of donor's intention.

200. Indications of donor's intention.

In cases where no particular purpose is named by the donor any indications throwing light on the donor's intentions will be considered¹, for example his religious opinions², his interest in a particular locality³, the nature of other charitable bequests in the same will⁴, precatory directions in favour of a certain class⁵, or even wishes expressed in an unattested codicil⁶.

If no indication can be gathered as to his particular intention, the donor's general intention must be considered. Thus, a gift for the poor generally could not properly be applied for a purpose unconnected with the relief of poverty, such as the rebuilding of a church⁷.

- 1 *Cook v Duckenfield* (1743) 2 Atk 562; *Ironmongers' Co v A-G* (1844) 10 Cl & Fin 908 at 922, 924-929, HL.
- 2 *Re Ashton's Charity* (1859) 27 Beav 115 at 120 per Romilly MR. See also *Ironmongers' Co v A-G* (1844) 10 Cl & Fin 908 at 922, 924-929, HL.
- 3 *Re Mann, Hardy v A-G* [1903] 1 Ch 232. A gift to 'the ward of Bread Street' was directed to be disposed of as the aldermen of the ward thought fit: *Baylis v A-G* (1741) 2 Atk 239.
- 4 *Mills v Farmer* (1815) 1 Mer 55 at 103, 722 per Lord Eldon LC; *Ironmongers' Co v A-G* (1844) 10 Cl & Fin 908, HL; *Lyons Corp v Advocate-General of Bengal* (1876) 1 App Cas 91 at 114, PC.
- 5 Eg 'clergymen who have large families and good characters': *Moggridge v Thackwell* (1803) 7 Ves 36. See also *A-G v London Corp* (1790) 3 Bro CC 171.
- 6 *A-G v Madden* (1843) 2 Con & Law 519.
- 7 *A-G v Peacock* (1676) Cas temp Finch 245.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/201. Court's discretion.

201. Court's discretion.

If no particular charitable purpose is indicated, and if the general charitable intention is subject to no restrictions, express or implied, the court's discretion in the application of the fund in what seems the most expedient manner is unlimited¹. Thus, gifts for charity generally may be applied for the benefit of hospitals², schools³ or other charitable institutions⁴; while bequests for the poor may be used for educational purposes⁵, for the benefit of scholars at a particular school⁶, for the testator's poor relations⁷, or for poor foreign refugees of whom the testator himself had been one⁸.

Similarly, where the name of the charity legatee is left blank, the gift is applied under a scheme⁹.

- 1 *Philpott v St George's Hospital* (1859) 27 Beav 107; *Re Ashton's Charity* (1859) 27 Beav 115. See also *Mills v Farmer* (1815) 1 Mer 55.
- 2 *Legge v Asgill* (1818) 3 Hare 194n; affd Turn & R 265n.
- 3 *A-G v Syderfen* (1683) 1 Vern 224. See also *Pieschel v Paris* (1825) 2 Sim & St 384; *Re Campden Charities* (1881) 18 ChD 310, CA.
- 4 *Re Dickason* (1837) 3 Hare 195n.
- 5 *Bishop of Hereford v Adams* (1802) 7 Ves 324; *Wilkinson v Malin* (1832) 2 Cr & J 636; *A-G v Bovill* (1840) 1 Ph 762; *London School Board v Faulconer* (1878) 8 ChD 571. See, however, *Re Lambeth Charities* (1853) 22 LJCh 959; *A-G v Duke of Northumberland* (1889) 5 TLR 719, CA.
- 6 *A-G v Peacock* (1676) Cas temp Finch 245 (Christ's Hospital).
- 7 *Ware v A-G* (1824) 3 Hare 194n; contra *Sanford v Gibbons* (1829) 3 Hare 195n.
- 8 *A-G v Rance* (1728) cited in Amb 422.
- 9 *Pieschel v Paris* (1825) 2 Sim & St 384; *Re White, White v White* [1893] 2 Ch 41, CA; and see *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/202. Failure of machinery for ascertaining objects.

202. Failure of machinery for ascertaining objects.

A scheme will also be directed where the machinery for ascertaining the intended objects of a charitable trust breaks down, as where the bequest is for charitable and non-charitable purposes in shares to be determined by persons who fail to make the necessary apportionment¹, or where objects are intended to be, but are not, named by the donor² or others³, or where a fund is to be divided among a particular class at the discretion of persons who fail to make the division⁴.

1 *Doyley v A-G* (1735) 4 Vin Abr 485 pl 16; *Salisbury v Denton* (1857) 3 K & J 529.

2 *A-G v Syderfen* (1683) 1 Vern 224; *Mills v Farmer* (1815) 1 Mer 55; and see *Charitable Donations Comrs v Sullivan* (1841) 1 Dr & War 501.

3 *White v White* (1778) 1 Bro CC 12; *A-G v Boulton* (1796) 3 Ves 220; *Moggridge v Thackwell* (1803) 7 Ves 36; *A-G v Fletcher* (1835) 5 LJCh 75; *Pocock v A-G* (1876) 3 ChD 342, CA; *Re Willis, Shaw v Willis* [1921] 1 Ch 44, CA.

4 *A-G v Gladstone* (1842) 13 Sim 7; and see *A-G v Wansay* (1808) 15 Ves 231; *Pease v Pattinson* (1886) 32 ChD 154.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/203. Continuing charitable trust.

203. Continuing charitable trust.

Where a donor's intention was to establish a continuing charitable trust¹, the execution of which he committed to trustees other than an existing charitable institution engaged in that particular charitable purpose, or an officer or officers of such an institution², a scheme will generally be directed if the donor has not prescribed all the details of administration, even though such details are expressly confined to the trustees' discretion³. In a simple case a scheme may not be necessary⁴. The principle is that, wherever a permanent charitable trust was intended, the court will not part with a fund of which it has once obtained control without seeing that a proper trust is established⁵.

1 A scheme is not usually directed where immediate distribution is authorised: see PARA 207.

2 See PARAS 178-179.

3 *Wellbeloved v Jones* (1822) 1 Sim & St 40; *Sons of the Clergy Corp'n v Mose* (1839) 9 Sim 610; *A-G v Stepney* (1804) 10 Ves 22; *Re Mann, Hardy v A-G* [1903] 1 Ch 232; *Re Webster, Pearson v Webster* [1912] 1 Ch 106; and see PARA 179.

4 *Nash v Morley* (1842) 5 Beav 177 at 185 per Lord Langdale MR.

5 *Wellbeloved v Jones* (1822) 1 Sim & St 40.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/204. Institutions which cannot be identified.

204. Institutions which cannot be identified.

If a gift is made to a named institution and the testator appears to have intended a particular institution to take, but it cannot be decided which of two or more existing institutions was intended, the gift will be applied by way of scheme¹, usually by being divided between the possible claimants².

1 As to schemes generally see PARA 177 et seq.

2 *Re Songest, Mayger v Forces Help Society and Lord Roberts' Workshops* [1956] 2 All ER 765, [1956] 1 WLR 897, CA; *Simon v Barber* (1829) 3 Hare 195n; *Bunting v Marriott* (1854) 19 Beav 163; *Re Hussey's Charities, Cheyne v Apreece, Symons v Delaval* (1861) 30 LJCh 491; and see the cases cited in the notes to PARA 158. As to gifts to institutions which have never existed see PARA 156.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/205. Institutions which do not exist.

205. Institutions which do not exist.

If a gift is made to an institution which has never existed or which has ceased to exist before the gift takes effect, but is made in such circumstances that the non-existence of the institution does not cause the gift to fail¹, a scheme² is necessary to apply the gift for the same purposes as those of the named institution³.

1 For the considerations which govern the efficacy of a gift to such an institution see PARAS 148-149, 156, 168.

2 As to schemes generally see PARA 177 et seq.

3 *Re Clergy Society* (1856) 2 K & J 615; *Re Davis, Hannen v Hillyer* [1902] 1 Ch 876; *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050, and the cases cited in the notes to PARA 148. As to whether this is properly called a cy-près application see *Re Robinson, Besant v German Reich* [1931] 2 Ch 122 at 128-129 per Maugham J.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/206. Failure of trustees.

206. Failure of trustees.

A scheme¹ has been directed if the trustees died or, being an institution, ceased to exist, or refused to act, whether or not the trust authorised an immediate distribution². Where the trustee appointed was appointed in the capacity of holder of an office which ceased to exist before the testator's death, the matter was referred to the master to approve a proper person to be trustee in place of that officer³.

1 As to schemes generally see PARA 177 et seq.

2 *Moggridge v Thackwell* (1803) 7 Ves 36; *A-G v Gladstone* (1842) 13 Sim 7; *Reeve v A-G* (1843) 3 Hare 191; *A-G v Lawes* (1849) 8 Hare 32; *Re Stanes' Will, Re Trustee Relief Act* (1853) 21 LTOS 261; *Re Fraser, Yeates v Fraser* (1883) 22 ChD 827; *Re Wilson-Barkworth, Burstall v Deck* (1933) 50 TLR 82; and see PARA 202 note 3.

3 *A-G v Stephens* (1834) 3 My & K 347.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(2) SCHEMES WHERE DONOR'S DIRECTIONS INADEQUATE/207. Immediate distribution not requiring scheme.

207. Immediate distribution not requiring scheme.

A scheme¹ will not usually be directed where the donor has authorised an immediate distribution² or a distribution at intervals for a limited period³ and the trustees are in existence and accept the trust⁴.

1 As to schemes generally see PARA 177 et seq.

2 *Re Barnett* (1860) 29 LJCh 871.

3 *Waldo v Caley* (1809) 16 Ves 206; *Powerscourt v Powerscourt* (1824) 1 Mol 616; *Horde v Earl of Suffolk* (1833) 2 My & K 59.

4 For such cases in which a scheme has been directed see PARA 178.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(3) CY-PRÈS SCHEMES/(i) In general/208. The cy-près doctrine.

(3) CY-PRÈS SCHEMES

(i) In general

208. The cy-près doctrine.

Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed, but the law will substitute another mode cy-près¹, that is, as near as possible to the mode specified by the donor².

An application cy-près results from the exercise of the court's ordinary jurisdiction to administer a charitable trust of which the particular mode of application has not been defined by the donor³. Where he has in fact prescribed a particular mode of application and that mode is incapable of being performed, but he had a charitable intention which transcended the particular mode of application prescribed, the court, in the exercise of this jurisdiction, can carry out the charitable intention as though the particular direction had not been expressed at all⁴.

However, where the particular mode of application prescribed by the donor was the essence of his intention, which may be shown by a condition⁵ or by particularity of language⁶, and that mode is incapable of being performed, there is nothing left upon which the court can found its

jurisdiction, so that in such circumstances the court has no power to direct any other charitable application in place of that which has failed⁷.

Where the particular mode of application does not exhaust a gift, these principles apply to the surplus⁸.

There can be no question under English law of a cy-près application of property subject to trusts which are not charitable in law⁹.

1 See *Moggridge v Thackwell* (1803) 7 Ves 36 at 69 per Lord Eldon LC (affd (1807) 13 Ves 416, HL); *Mills v Farmer* (1815) 1 Mer 55; *A-G v Bristol Corpn* (1820) 2 Jac & W 294 at 308 per Lord Eldon LC; *Chamberlayne v Brockett* (1872) 8 Ch App 206.

2 See the cases cited in note 1. See also *A-G v Whitchurch* (1796) 3 Ves 141 at 144 per Arden MR; *Cary v Abbot* (1802) 7 Ves 490; *Clephane v Edinburgh Corpn* (1869) LR 1 Sc & Div 417 at 421, HL, per Lord Westbury; *Ironmongers' Co v A-G* (1844) 10 Cl & Fin 908 at 922, HL, per Lord Campbell; *Re Avenon's Charity, A-G v Pelly* (1912) 106 LT 295, reported on further consideration [1913] 2 Ch 261.

3 See PARAS 178, 199.

4 *Re Wilson, Twentyman v Simpson* [1913] 1 Ch 314 at 321 per Parker J; and see *Re Monk, Giffen v Wedd* [1927] 2 Ch 197, CA. See also *Re JW Laing Trust, Steward's Co Ltd v A-G* [1984] Ch 143, [1984] 1 All ER 50 (obligation to distribute capital assets of trust fund within a certain time became inexpedient: scheme approved to remove obligation).

5 *Re Wilson, Twentyman v Simpson* [1913] 1 Ch 314.

6 *Re Good's Will Trusts, Oliver v Batten* [1950] 2 All ER 653.

7 *Re Good's Will Trusts, Oliver v Batten* [1950] 2 All ER 653.

8 See PARAS 130, 170.

9 *A-G v Haberdashers' Co* (1834) 1 My & K 420; *Thomson v Shakespear* (1860) 1 De G F & J 399; *Carne v Long* (1860) 2 De G F & J 75; *Re Clark's Trust* (1875) 1 ChD 497; and see *Pease v Pattinson* (1886) 32 ChD 154.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(3) CY-PRÈS SCHEMES/(i) In general/209. Cy-près and gifts to institutions.

209. Cy-près and gifts to institutions.

In the case of a gift to a non-existent institution which does not lapse by reason of the non-existence of the institution¹, the court, having held that the donor's benevolence is not restricted to the named institution, gives effect to that benevolence by applying the gift for the purposes carried on by a defunct institution or, in the case of one which has never existed, for the purposes indicated by the donor so far as ascertainable. This may not necessarily be a cy-près application², but it sometimes appears to fall within the cy-près doctrine³.

1 As to when such a gift does or does not lapse see PARAS 148-149, 167.

2 See PARA 205 note 3.

3 As to the cy-près doctrine see PARA 208.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(3) CY-PRÈS SCHEMES/(i) In general/210. What objects are cy-près.

210. What objects are cy-près.

The power of the court or the Charity Commission¹ to make schemes for the application of property cy-près must be exercised in accordance with the following provisions² of the Charities Act 1993³. Where any property given for charitable purposes⁴ is applicable cy-près, the court or the Commission may make a scheme providing for the property to be applied for such charitable purposes⁵, and (if the scheme provides for the property to be transferred to another charity)⁶ by or on trust for such other charity⁷, as it considers appropriate, having regard to the following matters⁸. The matters are: (1) the spirit of the original gift⁹; (2) the desirability of securing that the property is applied for charitable purposes which are close to the original purpose¹⁰; and (3) the need for the relevant charity¹¹ to have purposes which are suitable and effective in the light of current social and economic circumstances¹².

If a scheme provides for the property to be transferred to another charity, the scheme may impose on the trustees of that charity a duty to secure that the property is applied for purposes which are, so far as is reasonably practicable, similar in character to the original purposes¹³.

A charity may be cy-près to the original object even though it seems to have no trace of resemblance to it¹⁴, if no other can be found which has a nearer connection¹⁵.

Objects already adequately provided for should not be chosen for the purpose of an application cy-près¹⁶, nor should the application be made in such a way as merely to relieve the rates¹⁷, taxes or other public funds.

1 As to the Charity Commission see PARAS 538-572.

2 I.e. the Charities Act 1993 s 14B (added by the Charities Act 2006 s 18).

3 Charities Act 1993 s 14B(1) (as added: see note 2).

4 This applies to property given for charitable purposes whether before on or after 18 March 2008 (ie the day on which the statutory provisions come into force): see the Charities Act 2006 s 75(3), Sch 10 para 3. As to the meaning of 'charitable purposes' see PARA 2. 'Property given' includes property for the time being representing the property originally given or property derived from it: Charities Act 1993 s 14B(5) (as added: see note 2).

5 Charities Act 1993 s 14B(2)(a) (as added: see note 2).

6 References in the statutory provisions to the transfer of property to a charity are references to its transfer to the charity, or to the charity trustees, or to any trustee for the charity, or to any person nominated by the charity trustees to hold it in trust for the charity, as the scheme may provide: Charities Act 1993 s 14B(6) (as added: see note 2).

7 Charities Act 1993 s 14B(2)(b) (as added: see note 2).

8 Charities Act 1993 s 14B(2) (as added: see note 2).

9 Charities Act 1993 s 14B(3)(a) (as added: see note 2).

10 Charities Act 1993 s 14B(3)(b) (as added: see note 2).

11 'Relevant charity' means the charity by or on behalf of which the property is to be applied under the scheme: Charities Act 1993 s 14B(3) (as added: see note 2).

12 Charities Act 1993 s 14B(3)(c) (as added: see note 2).

13 Charities Act 1993 s 14B(4) (as added: see note 2).

14 *A-G v Boulton* (1794) 2 Ves 380 (affd (1796) 3 Ves 220); *Clephane v Edinburgh Corp'n* (1869) LR 1 Sc & Div 417 at 421, HL, per Lord Westbury.

15 *A-G v Ironmongers' Co* (1841) Cr & Ph 208 at 227 per Lord Brougham; affd sub nom *Ironmongers' Co v A-G* (1844) 10 Cl & Fin 908, HL (but the will in that case was so phrased that the only proper application of the fund whose objects had failed was to one of the other purposes benefited under the same will).

16 *Re Prison Charities* (1873) LR 16 Eq 129.

17 *Re Prison Charities* (1873) LR 16 Eq 129; *Re Poplar and Blackwall Free School* (1878) 8 ChD 543; *A-G v Duke of Northumberland* (1889) 5 TLR 237; varied on appeal 5 TLR 719, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(3) CY-PRÈS SCHEMES/(i) In general/211. No application cy-près without a scheme.

211. No application cy-près without a scheme.

However desirable it may be, in no circumstances can trustees of a charity apply the trust funds cy-près on their own initiative, without the direction of the court or of the Charity Commission¹. The Commission may make interim orders in lieu of a cy-près scheme for a limited period². Where the case permits and requires the property or some part of it to be applied cy-près, a trust for charitable purposes³ places a trustee under a duty to secure its effective use for charity⁴ by taking steps to enable it to be so applied⁵.

1 *A-G v Coopers' Co* (1812) 19 Ves 187; *A-G v Vivian* (1826) 1 Russ 226; *A-G v Kell* (1840) 2 Beav 575; *A-G v Bushby* (1857) 24 Beav 299; *Ward v Hipwell* (1862) 3 Giff 547; *Re Campden Charities* (1881) 18 ChD 310 at 328-329, CA, per Jessel MR; *Cross v Lloyd-Greame* (1909) 102 LT 163; and see *Re Weir Hospital* [1910] 2 Ch 124 at 133, CA, per Cozens-Hardy MR. See also PARAS 145, 331. As to the Charity Commission see PARAS 538-572.

2 See the Charities Act 1993 s 17(8); and PARA 192.

3 As to the meaning of 'charitable purposes' see PARA 2.

4 As to the meaning of 'charity' see PARA 1.

5 Charities Act 1993 s 13(5). This provision is declaratory.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(3) CY-PRÈS SCHEMES/(ii) When Property may be applied Cy-près/212. Failure of stated charitable objects.

(ii) When Property may be applied Cy-près

212. Failure of stated charitable objects.

Before the Charities Act 1960 came into force no property could be applied cy-près unless it was clearly established that the donor's directions could not be carried into effect at all¹. The specified purpose might be impracticable or impossible² for a number of reasons, such as that it had already been fulfilled³, or that its objects had ceased to exist⁴, or that insufficient money was available⁵. The purpose might be an illegal mode of achieving a lawful purpose⁶, or the gift might be dependent on named trustees accepting the trust⁷, or might be connected with another gift which was void⁸. Alternatively the property available might be more than could be used for the specified purpose⁹.

The question of a cy-près application may also arise in connection with gifts to charitable institutions, as where the named institution has never existed¹⁰, or has ceased to exist before the gift takes effect¹¹.

1 *A-G v Boulton* (1794) 2 Ves 380 at 387 per Arden MR (affd (1796) 3 Ves 220); *Re Weir Hospital* [1910] 2 Ch 124, CA.

2 As to impracticable gifts see PARA 161.

3 *Bunting v Marriott* (1854) 19 Beav 163; and see PARA 161 note 1.

4 *A-G v London Corp* (1790) 3 Bro CC 171; and see PARA 161 note 5.

5 *Cherry v Mott* (1836) 1 My & Cr 123; and see PARA 161 note 7.

6 *A-G v Vint* (1850) 3 De G & Sm 704. As to where gifts are to be applied in an illegal manner see PARA 160.

7 *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888; and see PARA 162. See also PARA 213 note 3.

8 *A-G v Whitchurch* (1796) 3 Ves 141; and see PARA 169.

9 *Re King, Kerr v Bradley* [1923] 1 Ch 243; and see PARA 163.

10 *Re Davis, Hannen v Hillyer* [1902] 1 Ch 876; and see PARA 156.

11 *Re Finger's Will Trusts, Turner v Ministry of Health* [1972] Ch 286, [1971] 3 All ER 1050; and see PARA 148. As to whether in the case of gifts to institutions the application is always correctly described as a cy-près application see PARA 205 note 3.

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213. Statutory conditions for cy-près application.

The Charities Act 1993 specifies the circumstances in which the original purposes¹ of a charitable gift can be altered to allow the property given or part of it to be applied cy-près². They are as follows:

- 54 (1) where the original purposes, in whole or in part: (a) have been, as far as may be, fulfilled³; or (b) cannot be carried out, or cannot be carried out according to the directions given and to the spirit of the gift⁴;
- 55 (2) where the original purposes provide a use for part only of the property available by virtue of the gift⁵;
- 56 (3) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably be made applicable to common purposes, regard being had to the appropriate considerations⁶;
- 57 (4) where the original purposes were laid down by reference to an area which then was, but has since ceased to be, a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason ceased to be suitable, regard being had to the appropriate considerations, or to be practical in administering the gift⁷;
- 58 (5) where the original purposes, in whole or in part, have, since they were laid down: (a) been adequately provided for by other means⁸; or (b) ceased, as being

useless or harmful to the community or for other reasons, to be in law charitable⁹; or (c) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the appropriate considerations¹⁰.

These statutory conditions appear to supersede completely the old law on failure of stated objects as an occasion for a cy-près application¹¹.

If the above requirements are not satisfied the court has no jurisdiction to alter the terms of a charitable gift¹².

1 Where the application of the property given has been altered or regulated by a scheme or otherwise, references to the original purposes of a gift are to be construed as referring to the purposes for which the property is for the time being applicable: Charities Act 1993 s 13(3). See also *Re JW Laing Trust, Steward's Co Ltd v A-G* [1984] Ch 143, [1984] 1 All ER 50 (clause relating to distribution of capital assets within a certain time not an original purpose under what is now the Charities Act 1993 s 13).

2 Charities Act 1993 s 13(1). The section only affects the conditions which must be satisfied in so far as they require a failure of the original purposes: see s 13(2); and PARA 214.

3 Charities Act 1993 s 13(1)(a)(i). The cases on impossibility and impracticability (see PARA 161) are included within these categories.

4 Charities Act 1993 s 13(1)(a)(ii). 'The spirit of the gift' means the basic intention underlying the gift, that intention being ascertainable from the terms of the relevant instrument read in the light of admissible evidence: see *Re Lepton's Charity, Ambler v Thomas* [1972] Ch 276 at 285 per Pennycuik V-C, sub nom *Re Lepton's Will Trusts, Re Lepton's Charity, Ambler v Thomas* [1971] 1 All ER 799 at 803 per Pennycuik V-C. Under the old law (see PARA 212) it was only the letter of the gift that could be considered.

Re Lysaght, Hill v Royal College of Surgeons [1966] Ch 191, [1965] 2 All ER 888, appears to fall within the Charities Act 1993 s 13(1)(a)(ii), although the statutory provision from which it is derived is not mentioned in the report, the argument having centred on whether there was any form of general charitable intention.

5 Charities Act 1993 s 13(1)(b). This comprises the cases on surplus capital and income: see PARAS 130 et seq, 163.

6 Charities Act 1993 s 13(1)(c) (amended by the Charities Act 2006 s 15(1), (2)). The 'appropriate considerations' are, on the one hand, the spirit of the gift concerned and, on the other, the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes: Charities Act 1993 s 13(1A) (added by the Charities Act 2006 s 15(1), (3)).

7 Charities Act 1993 s 13(1)(d) (amended by the Charities Act 2006 s 15(1), (2)); applied in *Peggs v Lamb* [1994] Ch 172, [1994] 2 All ER 15. Cf the power to make schemes enlarging the area of local charities under the Charities Act 1993 s 13(4) (see PARA 216), and the provisions as to dissolution and alteration of parishes (see PARA 266). See also *Richmond Corp v A-G* [1965] RA 117; on appeal sub nom *Re Richmond Parish Charity Lands* [1965] RA 343, CA.

8 Charities Act 1993 s 13(1)(e)(i).

9 Charities Act 1993 s 13(1)(e)(ii). Cf *National Anti-Vivisection Society v IRC* [1948] AC 31, [1947] 2 All ER 217, HL.

10 Charities Act 1993 s 13(1)(e)(iii) (amended by the Charities Act 2006 s 15(1), (2)). In *Re Lepton's Charity, Ambler v Thomas* [1972] Ch 276, sub nom *Re Lepton's Will Trusts, Re Lepton's Charity, Ambler v Thomas* [1971] 1 All ER 799, a testator gave £3 a year out of a fund to a minister and the residue (originally £2 a year) to the poor; since his death the income had risen so that the poor received almost £800. The 'original purposes' of the gift were held to refer to the gift as a whole, and not to the two parts of the gift separately. See also *Re Royal Kilmainham Hospital* [1966] IR 451 (decided under similar Republic of Ireland legislation); *Varsani v Jesani* [1999] Ch 219, [1998] 3 All ER 273, CA (charity established to promote interests of religious sect which later split into two factions).

11 See PARA 212.

12 See *Re Weir Hospital* [1910] 2 Ch 124, CA; *Oldham Borough Council v A-G* [1993] Ch 210, [1993] 2 All ER 432, CA. As to alteration of trusts see PARA 145.

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214. Necessity for general charitable intention.

On an initial failure¹ of the stated objects of a charitable gift, the property may only be applied cy-près if the donor had a general charitable intention² or, in the case of a surplus, if the donor intended to devote to charity the whole of the property given³. Where the failure occurs after the gift has once taken effect, the property will be applied cy-près unless the gift was expressly limited to the particular purpose which has failed⁴. The statutory conditions for cy-près applications⁵ do not dispense with the necessity for considering these factors⁶.

1 As to what constitutes initial failure see PARA 165 et seq. As to the failure of stated charitable objects generally see PARA 212.

2 As to general charitable intention see PARAS 166-170.

3 See PARA 170.

4 As to what constitutes subsequent failure see PARAS 171-172.

5 See PARA 213.

6 See the Charities Act 1993 s 13(2); and *Re JW Laing Trust, Steward's Co Ltd v A-G* [1984] Ch 143, [1984] 1 All ER 50; *Oldham Borough Council v A-G* (1992) Times, 13 April (revsd [1993] Ch 210, [1993] 2 All ER 432, CA); cf *Re Lysaght, Hill v Royal College of Surgeons* [1966] Ch 191, [1965] 2 All ER 888.

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215. Property of unidentifiable or disclaiming donors.

Under the law as it stood before the Charities Act 1960, property given for a specific charitable purpose was not necessarily applicable cy-près if that purpose was or became impracticable, unless a general charitable intention could be shown¹. Now, however, such property may be applied cy-près as if given for charitable purposes generally, where it belongs to a donor who cannot be found or identified after the prescribed advertisements and inquiries have been published and made and the prescribed period beginning with the publication of those advertisements has expired; or where it belongs to a donor who has executed a disclaimer in the prescribed form of his right to have the property returned².

1 See eg *Re Hillier, Hillier v A-G* [1954] 2 All ER 59, [1954] 1 WLR 700, CA; and PARAS 173-176.

2 See the Charities Act 1993 s 14 which derives from the Charities Act 1960 s 14 (as amended) (now repealed); and PARAS 174-175. In certain cases, advertisements and inquiries are unnecessary or may be dispensed with by the court or the Charity Commission: see s 14(3), (4); and PARA 175. As to the Charity Commission see PARAS 538-572.

The scheme must specify the amount of any property applied as belonging to donors who cannot be identified or found otherwise than under s 14(3) or (4), and may make provision for meeting any claim by any such donor:

see s 14(5); and PARA 175. Schemes have been made by virtue of these provisions in a number of cases: see the *Report of the Charity Commissioners for England and Wales for 1965* (HC Paper (1966-67) no 108) p 8; *Report of the Charity Commissioners for England and Wales for 1969* (HC Paper (1969-70) no 276) p 20.

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(4) SCHEMES EXTENDING AREA OF LOCAL CHARITIES

216. Schemes extending area of local charities.

Where property is held for charitable purposes which are laid down by reference to one of certain types of area, the court¹ may by scheme made under the court's jurisdiction with respect to charities², provide for enlarging the area to another specified area³.

This power is without prejudice to the court's powers to make true cy-près schemes in similar cases⁴.

1 As to the meaning of 'court' see PARA 175 note 12.

2 As to the court's jurisdiction with respect to charities see PARA 529 et seq.

3 See the Charities Act 1993 s 13(4). This provision is expressed to be without prejudice to s 13(1) (see PARA 213): s 13(4).

Where the existing area is Greater London, the permissible enlargement is any area comprising Greater London: s 13(4), Sch 3 para 1.

Where the existing area is any area in Greater London and not in, or partly in, the City of London the permissible enlargements are: (1) any area in Greater London and not in, or partly in, the City of London; (2) the area of Greater London, exclusive of the City of London; (3) any area comprising the area of Greater London, exclusive of the City of London; (4) any area partly in Greater London and partly in any adjacent parish or parishes (civil or ecclesiastical) and not partly in the City of London: Sch 3 para 2.

Where the existing area is a district, the permissible enlargement is any area comprising the district: Sch 3 para 3.

Where the existing area is a Welsh county or county borough the permissible enlargement is any area comprising that county or county borough: Sch 3 para 3A (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 101(5), (6)).

Where the existing area is any area in a district, the permissible enlargement is: (a) any area in the district; (b) the district; (c) any area comprising the district; (d) any area partly in the district and partly in any adjacent district: Charities Act 1993 Sch 3 para 4 (amended by the Local Government (Wales) Act 1994 Sch 16 para 101(6)).

Where the existing area is any area in a Welsh county or county borough, the permissible enlargements are: (i) any area in the county or county borough; (ii) the county or county borough; (iii) any area comprising the county or county borough; (iv) any area partly in the county or county borough and partly in any adjacent Welsh county or county borough or in any adjacent district: Charities Act 1993 Sch 3 para 4A (added by the Local Government (Wales) Act 1994 Sch 16 para 101(5), (6)).

Where the existing area is a parish (civil or ecclesiastical), or two or more parishes, or an area in a parish, or partly in each of two or more parishes, the permissible enlargement is any area not extending beyond the parish or parishes comprising or adjacent to the existing area: Charities Act 1993 Sch 3 para 5.

In Wales, where the existing area is a community, or two or more communities, or an area in a community, or partly in each of two or more communities, the permissible enlargement is any area not extending beyond the community or communities comprising or adjacent to the existing area: Sch 3 para 6.

As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

4 Charities Act 1993 s 13(4). For the conditions in which cy-près schemes may be made see PARA 213. Note also the provisions as to alteration or dissolution of parishes (as to which see PARA 266).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(5) SPECIAL PROVISIONS FOR UNINCORPORATED CHARITIES AND SPECIAL TRUSTS/217. Small unincorporated charities: power to transfer property.

(5) SPECIAL PROVISIONS FOR UNINCORPORATED CHARITIES AND SPECIAL TRUSTS

217. Small unincorporated charities: power to transfer property.

The Charities Act 1993 makes provision for a small unincorporated charity to transfer its property¹. For a charity to fall within this provision, its gross income² in its last financial year³ must not have exceeded £10,000⁴ and the charity must not hold any land on trusts⁵ which stipulate that the land is to be used for the purposes, or any particular purposes, of the charity⁶. The provisions do not apply to a charitable company or other body corporate⁷. The charity trustees⁸ of a charity which comes within these provisions may resolve⁹ that all the property of the charity should be transferred to such other charity¹⁰ or be divided between two or more other charities¹¹, as is or are specified in the resolution¹². Each charity specified may be either a registered charity or one not required to be registered¹³. Such a resolution can be passed only if the trustees are satisfied that it is expedient in the interests of furthering the purposes for which the property is held by the transferor charity for the property to be transferred in accordance with the resolution¹⁴, and that the purposes, or any of the purposes, of any charity to which property is to be transferred under the resolution are substantially similar to the purposes, or any of the purposes, of the transferor¹⁵.

Where any one of the resolutions mentioned above has been passed by the charity trustees, they must send a copy to the Charity Commission¹⁶ together with a statement of their reasons for passing it¹⁷. Having received the copy of the resolution the Commission may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction¹⁸, and, if it gives such a direction, the Commission must take into account any representations¹⁹ made to it by persons appearing to it to be interested in the charity²⁰. When considering the resolution, the Commission may require the charity trustees to provide additional information or explanations relating to the circumstances in and by reference to which they passed the resolution²¹, or relating to their compliance with the statutory²² requirements²³.

Such a resolution takes effect at the end of the period of 60 days beginning with the date on which the copy of it was received by the Charity Commission²⁴, unless the Commission before the end of that period²⁵ notifies the charity trustees in writing that it objects to the resolution²⁶, or if the running of the 60 day period is suspended under the statutory provisions²⁷. The Commission may object to the resolution either on the grounds that any statutory obligation imposed on the charity trustees has not been complied with in connection with the resolution, or on the merits of the proposals contained in the resolution²⁸.

An appeal against a decision of the Commission to notify the charity trustees that it objects to such a resolution lies to the Tribunal²⁹ at the instance of the Attorney General, the charity trustees or any other persons who is or may be affected by the decision³⁰. The Tribunal has the power to quash the decision³¹.

Where such a resolution has taken effect, the charity trustees must arrange for all the property of the transferor charity to be transferred in accordance with the resolution, and on terms that any property so transferred: (1) is to be held by the charity to which it is transferred in

accordance with the statutory requirement that the trustees of the transferee charity must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity; save where those trustees consider that complying with it would not result in a suitable and effective method of applying the property³²; but (2) when so held is nevertheless to be subject to any restrictions on expenditure to which it was subject as property of the transferor charity³³. The charity trustees must arrange for the property to be so transferred by such date after the resolution takes effect as they agree with the charity trustees of the transferee charity or charities concerned³⁴. The charity trustees of any charity to which property is transferred under this section must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity; but this requirement does not apply if those charity trustees consider that complying with it would not result in a suitable and effective method of applying the property³⁵.

For the purpose of enabling any property to be transferred to a charity under these statutory provisions, the Charity Commission may, at the request of the charity trustees of that charity, make orders vesting any property of the transferor charity in the transferee charity, in its charity trustees or in any trustee for that charity, or in any other person nominated by those charity trustees to hold property in trust for that charity³⁶.

1 See the Charities Act 1993 s 74 (substituted by the Charities Act 2006 s 40): and the text and notes 2-23. Modified rules are applicable to small charities with a permanent endowment: Charities Act 1993 s 74(15) (as so substituted); on which see PARA 218. A charity is deemed for the purposes of the Charities Act 1993 to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and 'permanent endowment' means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity: s 96(3).

2 'Gross income', in relation to a charity, means its gross recorded income from all sources, including special trusts: Charities Act 1993 s 97(1). 'Special trust' means property which is held and administered by or on behalf of a charity for any special purposes of the charity, and is so held and administered on separate trusts relating only to that property but a special trust does not, by itself, constitute a charity for the purposes of Pt VI (ss 41-49A): s 97(1). As to the meaning of 'charity' see PARA 1.

3 'Financial year' is to be construed, in relation to a charity which is a company, in accordance with the Companies Act 2006 s 390 (see **COMPANIES** vol 15 (2009) PARA 711), and, in relation to any other charity, in accordance with regulations made under the Charities Act 1993 s 42(2) (see PARA 338): Charities Act 1993 s 97(1). Accordingly the financial year of a charity which is not a company ('relevant charity') is, for the purposes of the Charities Act 1993 and regulations made under that Act, to be determined in accordance with the following: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 3(1). The first financial year of a relevant charity is the period beginning with the day on which the charity is established and ending with its accounting reference date or such other date, not more than seven days before or after the accounting reference date, as the charity trustees may determine: reg 3(2). Subsequent financial years of a relevant charity begin with the day immediately following the last day of the charity's previous financial year and end with its accounting reference date or such other date, not more than seven days before or after the accounting reference date, as the charity trustees may determine: reg 3(3). For this purpose, the 'accounting reference date' of a relevant charity is:

3 (1) in relation to the first financial year of the charity, such date, not less than six months and not more than 18 months after the date on which the charity was established as the charity trustees may determine (reg 3(4)(a));

4 (2) in relation to a subsequent financial year of the charity:

1. (a) the date 12 months after the previous accounting reference date of the charity (reg 3(4)(b)(i)); or

1

2. (b) subject to reg 3(5) and reg 3(7), such other date, not less than six months and not more than 18 months after the previous accounting reference date of the charity as the charity trustees may determine (reg 3(4)(b)(ii)).

2

The charity trustees may only exercise the power in head (2) in respect of a restricted financial year with the consent of the Commission: reg 3(5). For this purpose 'restricted financial year' means a financial year beginning immediately after:

- 5 (i) a financial year in respect of which the charity trustees had exercised the power in head (b) above or in the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 6(4)(b) (revoked) (Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 3(5)(a));
- 6 (ii) a financial year ('A') where A began immediately after a financial year in respect of which the charity trustees had exercised the power in head (b) above or in the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 6(4)(b) (revoked) (Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 3(5)(b)).

The charity trustees may exercise their power under head (b) above so as to determine an accounting reference date less, or more, than 12 months from the beginning of the financial year only where they satisfied that there are exceptional reasons to do so: reg 3(7).

4 The Minister may by order amend the Charities Act 1993 s 74(1) by substituting a different sum for the sum for the time being specified there: s 74(13) (as substituted: see note 1). At the date at which this volume states the law no such order had been made. As to the Minister see PARA 580. As to the making of orders generally see s 86; and PARA 584.

5 'Trusts', in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning: Charities Act 1993 s 97(1).

6 Charities Act 1993 s 74(1) (as substituted: see note 1). As from a day to be appointed, the requirement that a charity must satisfy the gross income limit in order to fall within this provision does not apply in the case of a resolution by the charity trustees of a charity to transfer all its property to a charitable incorporated organisation or to divide its property between two or more charitable incorporated organisations: see the Charities Act 1993 s 690 (prospectively added by the Charities Act 2006 s 34, Sch 7). At the date at which this volume states the law no such day has been appointed. As to the Minister see PARA 580.

7 Charities Act 1993 s 74(1)(c) (as substituted: see note 1). As to the meaning of 'company' see PARA 227.

8 As to the meaning of 'charity trustees' see PARA 1 note 10.

9 Any resolution must be passed by a majority of not less than two-thirds of the charity trustees voting on the resolution: Charities Act 1993 s 74(5) (as substituted: see note 1).

10 For these purposes, references to the transfer of property to a charity are references to its transfer to the charity, or to the charity trustees, or to any trustee for the charity, or to a person nominated by the charity trustees to hold it in trust for the charity, as the charity trustees may determine: Charities Act 1993 s 74(14) (as substituted: see note 1).

11 In such manner as is specified in the resolution: Charities Act 1993 s 74(2)(b) (as substituted: see note 1).

12 See the Charities Act 1993 s 74(2) (as substituted: see note 1). Such a transfer of any property does not operate as a breach of any covenant or condition against alienation or give rise to forfeiture: see PARA 187 note 6.

13 Charities Act 1993 s 74(3) (as substituted: see note 1). As to the register see PARA 304 et seq.

14 Charities Act 1993 s 74(4)(a) (as substituted: see note 1).

15 Charities Act 1993 s 74(4)(b) (as substituted: see note 1).

16 As to the Charity Commission see PARAS 538-572.

17 Charities Act 1993 s 74(6) (as substituted: see note 1).

18 Charities Act 1993 s 74(7)(a) (as substituted: see note 1).

19 Where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees: Charities Act 1993 s 74(7)(b) (as substituted: see note 1).

20 Charities Act 1993 s 74(7)(b) (as substituted: see note 1).

21 Charities Act 1993 s 74(8)(a) (as substituted: see note 1).

- 22 le those under the Charities Act 1993 s 74 (as substituted: see note 1).
- 23 Charities Act 1993 s 74(8)(b) (as substituted: see note 1).
- 24 Charities Act 1993 s 74(9) (as substituted: see note 1).
- 25 As modified by the statutory provisions, if applicable: see note 28.
- 26 See the Charities Act 1993 ss 74(9) (as substituted: see note 1), 74A(1)(a), (2) (added by the Charities Act 2006 s 40).
- 27 See the Charities Act 1993 ss 74(9) (as substituted: see note 1), 74A(1)(b), (3)-(6) (added by the Charities Act 2006 s 40).
- If the Commission directs the charity trustees to give public notice of a resolution (ie under the Charities Act 1993 s 74(7) (as so substituted)) then the running of the 60 day period is suspended as from the date on which the direction is given to the charity trustees, until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees: s 74A(3) (as so added).
- If the Commission directs the charity trustees to provide any information or explanations (ie under s 74(8) (as substituted: see note 1)) then the running of the 60 day period is suspended as from the date on which the direction is given to the charity trustees, until the date on which the information or explanations is or are provided to the Commission: s 74A(4) (as so added).
- Once the period of time, or the total period of time, during which the 60 day period is suspended exceeds 120 days, the resolution (if not previously objected to by the Commission) is to be treated as if it had never been passed: s 74A(5), (6) (as so added).
- 28 Charities Act 1993 s 74A(2) (as added: see note 28).
- 29 As to the Tribunal see PARA 573 et seq.
- 30 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 31 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 32 Charities Act 1993 s 74(10)(a), (11) (as substituted: see note 1).
- 33 Charities Act 1993 s 74(10)(b) (as substituted: see note 1).
- 34 Charities Act 1993 s 74(10) (as substituted: see note 1).
- 35 Charities Act 1993 s 74(11) (as substituted: see note 1).
- 36 Charities Act 1993 s 74(12) (as substituted: see note 1).

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218. Transfer where charity has permanent endowment.

Special rules apply to resolutions to transfer the property of a charity to such other charity or charities under the statutory provisions for small unincorporated charities¹ where the charity in question has a permanent endowment², whether or not the charity's trusts contain provision for the termination of the charity³.

In the case of charity all the property of which is comprised in its permanent endowment, the statutory provisions apply to any or all of such property⁴ subject to the following modifications⁵:

- 59 (1) if the property comprised in its permanent endowment is to be transferred to a single charity, the charity trustees must be satisfied⁶ that the proposed transferee

- charity has purposes which are substantially similar to all of the purposes of the transferor charity⁷;
- 60 (2) if the property comprised in its permanent endowment is to be transferred to two or more charities, the charity trustees must be satisfied⁸ that the proposed transferee charities, taken together, have purposes which are substantially similar to all of the purposes of the transferor charity, and that each of the proposed transferee charities has purposes which are substantially similar to one or more of the purposes of the transferor charity⁹;
- 61 (3) in the case of a transfer to two or more charities the resolution must provide for the property comprised in the permanent endowment of the charity to be divided between the transferee charities in such a way as to take account of such guidance as may be given by the Charity Commission¹⁰ for these purposes¹¹;
- 62 (4) the requirement that the charity trustees of any charity to which property is transferred must secure, so far as is reasonably practicable, that the property is applied for such of its purposes as are substantially similar to those of the transferor charity¹², must apply in the case of every such transfer and in complying with that requirement the charity trustees of a transferee charity must secure that the application of property transferred to the charity takes account of any such Commission guidance¹³.

In the case of a charity with both a permanent endowment and unrestricted property¹⁴, such a resolution must relate to both its permanent endowment and its unrestricted property¹⁵. The statutory provisions apply in relation to the unrestricted property of the charity as if references in those provisions were references to any or all of its unrestricted property¹⁶. The statutory provisions apply in relation to the permanent endowment subject to the modifications above¹⁷.

1. In the provisions contained within the Charities Act 1993 s 74 (see PARA 217).

2. See the Charities Act 1993 s 74(15); and PARA 217.

3. Charities Act 1993 s 74B(1) (s 74 substituted and s 74B added by the Charities Act 2006 s 40).

4. Charities Act 1993 s 74B(5) (as added: see note 3).

5. See the Charities Act 1993 s 74B(2)(b), (4) (as added: see note 3). References in the following modifications to the transfer of property to a charity are references to its transfer to the charity, or to the charity trustees, or to any trustee for the charity, or to a person nominated by the charity trustees to hold it in trust for the charity, as the charity trustees may determine: ss 74(14) (as substituted: see note 3), 74B(12) (as added: see note 3).

6. In rather than being satisfied as mentioned in the Charities Act 1993 s 74(4)(b). As to s 74(4)(b) see PARA 217 text and note 15. For the purposes of the statutory provisions contained in ss 74-74A, any reference to any obligation imposed on the charity trustees by the statutory provisions in s 74 includes a reference to any obligation imposed on them by virtue of s 74B(6)-(8): s 74B(11) (as added: see note 3). As to the statutory provisions see PARA 217.

7. See the Charities Act 1993 s 74B(6) (as added: see note 3).

8. In rather than being satisfied as mentioned in the Charities Act 1993 s 74(4)(b). See note 6.

9. See the Charities Act 1993 s 74B(7) (as added: see note 3).

10. As to the Charity Commission see PARAS 538-572. Any guidance given by the Commission for these purposes may take such form and be given in such manner as the Commission considers appropriate: Charities Act 1993 s 74B(10) (as added: see note 3).

11. Charities Act 1993 s 74B(8) (as added: see note 3). See note 6.

12. In the requirement in the Charities Act 1993 s 74(11) (as substituted: see note 3); on which see PARA 217.

- 13 Charities Act 1993 s 74B(9) (as added: see note 3).
- 14 le property other than permanent endowment: Charities Act 1993 s 74B(2)(a) (as added: see note 3).
- 15 Charities Act 1993 s 74B(2)(a)(i) (as added: see note 3).
- 16 Charities Act 1993 s 74B(2)(a)(ii), (3).
- 17 le the modifications detailed in text and notes 4-11: Charities Act 1993 s 74B(2)(a)(ii), (4)-(11).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(5) SPECIAL PROVISIONS FOR UNINCORPORATED CHARITIES AND SPECIAL TRUSTS/219. Small unincorporated charities: power to modify purposes.

219. Small unincorporated charities: power to modify purposes.

The Charities Act 1993 makes provision for a small unincorporated charity to modify its purposes¹. For a charity to fall within this provision, its gross income² in its last financial year³ must not have exceeded £10,000⁴ and the charity must not hold any land on trusts⁵ which stipulate that the land is to be used for the purposes, or any particular purposes, of the charity⁶. The provisions do not apply to a charitable company or other body corporate⁷. The charity trustees⁸ may resolve⁹ that the trusts of the charity should be modified by replacing all or any of the purposes of the charity with other charitable purposes¹⁰ specified in the resolution¹¹. Such a resolution can be passed only where the charity trustees are satisfied that it is expedient in the interests of the charity for the purposes in question to be replaced and that, in so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced¹².

The procedure, if a resolution is passed, is exactly the same as in the case of a resolution to transfer the charity property, and the trusts of the charity concerned are to be taken to be have been modified in accordance with the terms of the resolution as from the time when it takes effect under this procedure¹³.

- 1 See the Charities Act 1993 s 74C and notes 2-13.
- 2 As to the meaning of 'gross income' see PARA 217 note 2. As to the meaning of 'charity' see PARA 1. As to the meaning of 'special trust' see PARA 217 note 2.
- 3 As to the meaning of 'financial year' see PARA 217 note 3.
- 4 The Minister may by order amend the Charities Act 1993 s 74C(1) by substituting a different sum for the sum for the time being specified there: s 74C(12) (added by the Charities Act 2006 s 41). At the date at which this volume states the law no such order had been made. As to the Minister see PARA 580. As to the making of orders generally see the Charities Act 1993 s 86; and PARA 584.
- 5 As to the meaning of 'trusts' see PARA 217 note 5.
- 6 Charities Act 1993 s 74C(1) (as added: see note 4).
- 7 Charities Act 1993 s 74C(1)(c) (as added: see note 4). As to the meaning of 'company' see PARA 227.
- 8 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 9 Any resolution must be passed by a majority of not less than two-thirds of the charity trustees voting on the resolution: Charities Act 1993 s 74C(5) (as added: see note 4).
- 10 Charities Act 1993 s 74C(3) (as added: see note 4). As to the meaning of 'charitable purposes' see PARA 2.
- 11 Charities Act 1993 s 74C(2) (as added: see note 4).

12 Charities Act 1993 s 74C(4) (as added: see note 4).

13 Charities Act 1993 s 74C(11) (as added: see note 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(5) SPECIAL PROVISIONS FOR UNINCORPORATED CHARITIES AND SPECIAL TRUSTS/220. Small unincorporated charities: power to modify powers or procedures.

220. Small unincorporated charities: power to modify powers or procedures.

The Charities Act 1993 makes provision for any charity which is not a company or other body corporate¹ to modify its powers or procedures². The charity trustees³ may resolve that any provision of the trusts of the charity relating to any of the powers exercisable by the charity trustees in the administration of the charity, or regulating the procedure to be followed in any respect in connection with its administration, should be modified in such manner as is specified in the resolution⁴. Where the charity is an unincorporated association with a body of members distinct from the charity trustees, any such resolution must be approved by a further resolution which is passed at a general meeting of the body⁵. The trusts are to be taken to have been so modified as from such date as specified in the resolution or, in the case of an unincorporated association with a body of members distinct from the charity trustees, the date when any such further resolution was passed⁶, if later⁷.

1 See the Charities Act 1993 s 74D(1) (added by the Charities Act 2006 s 42). As to the meaning of 'company' see PARA 227.

2 See the Charities Act 1993 s 74D.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities Act 1993 s 74D(2) (as added: see note 1). Where the trustees have passed a resolution under s 74D(2) and (if s 74D(4) applies) a further resolution has been passed under s 74D(4) the trusts of the charity are to be taken to have been modified in accordance with the terms of the resolution: s 74D(5) (as so added).

5 Charities Act 1993 s 74D(3), (4) (as added: see note 1). This must either be by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting: s 74D(4)(a), (b) (as so added).

6 Ie under the Charities Act 1993 s 74D(4).

7 See the Charities Act 1993 s 74D(6) (as added: see note 1).

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221. Small unincorporated charities: general power to spend capital.

The Charities Act 1993 makes provision for a small unincorporated charity to spend its capital¹. The provision applies to any available endowment fund² of a charity which is not a company or a body corporate³, save where the fund falls under the statutory provision for larger unincorporated associations to spend capital given for a particular purpose⁴. Where the charity trustees⁵ are satisfied that the purposes set out in the trusts to which the fund is subject could

be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income⁶, then the charity trustees may resolve that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it⁷. Once the charity trustees have passed such a resolution, the fund or portion may be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions with respect to capital expenditure⁸. The fund or portion may be so expended as from such date as is specified for the purpose in the resolution⁹.

1 See the Charities Act 1993 s 75 and notes 2-9.

2 For these purposes 'available endowment fund' means the whole of the charity's permanent endowment if it is all subject to the same trusts, or any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject: Charities Act 1993 s 75(7) (substituted by the Charities Act 2006 s 43).

3 Charities Act 1993 s 75(1) (as substituted: see note 2).

4 Charities Act 1993 s 75(2) (as substituted: see note 2). As to the statutory provision for larger unincorporated associations to spend capital given for a particular purpose see PARA 222.

5 As to the meaning of 'charity trustees' see PARA 1 note 10.

6 Charities Act 1993 s 75(4) (as substituted: see note 2).

7 Charities Act 1993 s 75(3) (as substituted: see note 2).

8 Charities Act 1993 s 75(5) (as substituted: see note 2).

9 Charities Act 1993 s 75(6) (as substituted: see note 2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(5) SPECIAL PROVISIONS FOR UNINCORPORATED CHARITIES AND SPECIAL TRUSTS/222. Larger unincorporated charities: power to spend capital given for particular purpose.

222. Larger unincorporated charities: power to spend capital given for particular purpose.

The Charities Act 1993 makes provision for a larger unincorporated charity to spend its capital¹. The provision applies to any available endowment fund² of a charity which is not a company or a body corporate³, where: (1) the capital of the fund consists entirely of property given⁴ by a particular individual, by a particular institution by way of grant or otherwise, or by two or more individuals or institutions in pursuit of a common purpose⁵; (2) the relevant charity's gross income in its last financial year exceeded £1,000⁶; and (3) the market value⁷ of the endowment fund exceeds £10,000⁸. Where the charity trustees⁹ are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income¹⁰, then the charity trustees may resolve that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it¹¹.

Once the charity trustees have passed such a resolution, a copy must be passed to the Charity Commission¹², together with a statement of their reasons for passing it¹³. The Commission may direct the charity trustees to give public notice of the resolution in such manner as is specified in the direction¹⁴, and if it gives such a direction, the Commission must take into account any

representations made to it by persons appearing to it to be interested in the charity¹⁵. The Commission may also direct the charity trustees to provide the Commission with additional information or explanations relating to the circumstances in and by reference to which they have decided to act under the statutory provision, or their compliance with any obligation imposed on them by or under the statutory provision¹⁶.

When considering whether to concur with the resolution the Commission must take into account any evidence available to it as to the wishes of the donor or donors of the endowment fund, and any changes in the circumstances relating to the charity since the making of the gift or gifts, including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates¹⁷. The Commission must not concur with the resolution unless it is satisfied that: (a) its implementation would accord with the spirit of the gift or gifts, even though it would be inconsistent with the restrictions with respect to expenditure of capital that apply; and (b) the charity trustees have complied with their obligations imposed on them by or under the statutory provision¹⁸.

The Commission must notify the charity trustees in writing, before the end of a period of three months beginning with the 'relevant date', either that it concurs with the resolution, or that it does not concur with it¹⁹. The 'relevant date' means the date on which the Commission receives a copy of the resolution, save where the Commission directs the charity trustees to give public notice of the resolution when it means the date when that notice is given²⁰. Where the charity trustees are notified by the Commission that it concurs with the resolution, or the period of three months has elapsed without the Commission notifying them that it does not concur with the resolution, the fund or portion may be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions with respect to expenditure of capital that apply²¹. The charity trustees may not otherwise implement such a resolution²².

An appeal against a decision of the Commission not to concur with such a resolution lies to the Tribunal²³ at the instance of the Attorney General, the charity trustees, the charity itself (if a body corporate), or any other person who is or may be affected by the decision²⁴. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission²⁵.

1 See the Charities Act 1993 s 75A and notes 2-22.

2 As to the meaning of 'available endowment fund' see the Charities Act 1993 s 75(7); and PARA 221 note 2 (definition applied by s 75A(14)(a) (added by the Charities Act 2006 s 43)).

3 See the Charities Act 1993 s 75A(1) (as added: see note 2). As to the meaning of 'company' see PARA 227.

4 This includes the giving under a will: Charities Act 1993 s 75A(14)(c) (as added: see note 2). As to wills generally see **WILLS**.

5 Charities Act 1993 s 75A(1)(a) (as added: see note 2).

6 Charities Act 1993 s 75A(1)(b), (2)(a) (as added: see note 2). The Minister may by order amend s 75A(2)(a) and s 75A(2)(b) by substituting a different sum for the sum for the time being specified there: s 75A(13) (as so added). At the date at which this volume states the law no such order had been made. As to the Minister see PARA 580.

7 'Market value', in relation to an endowment fund, means the market value of the fund as recorded in the accounts for the last financial year of the relevant charity, or if no such value was so recorded, the current market value of the fund as determined on a valuation carried out for the purpose: Charities Act 1993 s 75A(14)(b) (as added: see note 2).

8 Charities Act 1993 s 75A(1)(b), (2)(b) (as added: see note 2). See note 6.

9 As to the meaning of 'charity trustees' see PARA 1 note 10.

10 Charities Act 1993 s 75A(4) (as added: see note 2).

- 11 Charities Act 1993 s 75A(3) (as added: see note 2).
- 12 As to the Charity Commission see PARAS 538-572.
- 13 Charities Act 1993 s 75A(5)(a) (as added: see note 2).
- 14 Charities Act 1993 s 75A(6)(a) (as added: see note 2).
- 15 Where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the charity trustees: Charities Act 1993 s 75A(6)(b) (as added: see note 2).
- 16 Charities Act 1993 s 75A(7) (as added: see note 2).
- 17 Charities Act 1993 s 75A(8) (as added: see note 2).
- 18 I.e. the provisions in the Charities Act 1993 s 75A.
- 19 Charities Act 1993 s 75A(10) (as added: see note 2).
- 20 Charities Act 1993 s 75A(11) (as added: see note 2).
- 21 Charities Act 1993 s 75A(12) (as added: see note 2).
- 22 Charities Act 1993 s 75A(5)(b) (as added: see note 2).
- 23 As to the Tribunal see PARA 573 et seq.
- 24 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 25 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/4. SCHEMES AND THE CY-PRÈS DOCTRINE/(5) SPECIAL PROVISIONS FOR UNINCORPORATED CHARITIES AND SPECIAL TRUSTS/223. Power to spend capital subject to special trusts.

223. Power to spend capital subject to special trusts.

The Charities Act 1993 makes provision for a charity to spend capital subject to a special trust which, as the result of a direction by the Charity Commission¹, is to be treated as a separate charity for the purposes of the Act². The provision applies to any available endowment fund³ of such a special trust⁴. Where the charity trustees⁵ are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income⁶, then they may resolve that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it⁷.

Where the market value⁸ of the fund does not exceed £10,000⁹ or the capital of the fund does not consist entirely of property given¹⁰ by a particular individual, by a particular institution (by way of grant or otherwise) or by two or more individuals or institutions in pursuit of a common purpose¹¹, then if such a resolution is passed the fund may be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to these restrictions¹², from such date as is specified for this purpose in the resolution¹³.

Where the market value of the fund exceeds £10,000¹⁴ and the capital of the fund consists entirely of property given by a particular individual, by a particular institution (by way of grant or otherwise) or by two or more individuals or institutions in pursuit of a common purpose, then, if such a resolution is passed, the same procedure as applies in the case of a resolution in respect of a larger unincorporated charity to spend its capital must be followed¹⁵: where the

charity trustees are notified by the Charity Commission that it concurs with the resolution, or the period of three months has elapsed without the Commission notifying them that it does not concur with the resolution¹⁶, then the fund may be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to these restrictions¹⁷, from such date as is specified for this purpose in the resolution¹⁸.

- 1 As to the Charity Commission see PARAS 538-572.
- 2 Charities Act 1993 s 75B (added by the Charities Act 2006 s 43); ie a special trust under the Charities Act 1993 s 96(5) (see PARA 545): s 75B(1) (as so added).
- 3 As to the meaning of 'available endowment fund' see the Charities Act 1993 s 75(7); and PARA 221 (definition applied by s 75B(8)(a) (as added: see note 2)).
- 4 Charities Act 1993 s 75B(1) (as added: see note 2).
- 5 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 6 Charities Act 1993 s 75B(3) (as added: see note 2).
- 7 Charities Act 1993 s 75B(2) (as added: see note 2).
- 8 As to the meaning of 'market value' see the Charities Act 1993 s 75(A)(14)(b); and PARA 222 note 7 (definition applied by s 75B(8)(b) (as added: see note 2)).
- 9 Charities Act 1993 s 75B(4) (as added: see note 2). The Minister may by order amend s 75B(4) by substituting a different sum for the sum for the time being specified there: s 75B(7) (as so added). At the date at which this volume states the law no such order had been made. As to the Minister see PARA 580.
- 10 Including under a will: Charities Act 1993 s 75B(8)(c) (as added: see note 2). As to wills generally see **WILLS**.
- 11 Ie the fund does not fall within the Charities Act 1993 s 75B(4).
- 12 Charities Act 1993 s 75B(5) (as added: see note 2).
- 13 Charities Act 1993 s 75B(6) (as added: see note 2).
- 14 Charities Act 1993 s 75B(4) (as added: see note 2).
- 15 Charities Act 1993 s 75B(4) (as added: see note 2).
- 16 Charities Act 1993 s 75B(5)(b) (as added: see note 2).
- 17 Charities Act 1993 s 75B(5) (as added: see note 2).
- 18 Charities Act 1993 s 75B(6) (as added: see note 2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(1) WHAT CORPORATIONS ARE CHARITABLE CORPORATIONS/224. Meanings of 'charitable corporation' and 'eleemosynary corporation'.

5. CHARITABLE CORPORATIONS

(1) WHAT CORPORATIONS ARE CHARITABLE CORPORATIONS

224. Meanings of 'charitable corporation' and 'eleemosynary corporation'.

A charitable corporation is one whose corporate purpose is charitable. An eleemosynary corporation is a corporation established for the perpetual distribution of the free alms or bounty of the founder¹.

1 1 Bl Com 459; 1 Kyd on Corporations 25; Shelford's Law of Mortmain 23; and see PARA 254. Corporations which are wholly ecclesiastical are taken out of that definition by the Charities Act 1993 s 96(2) (see PARA 194). As to what are eleemosynary charities see *Re Armitage, Ellam v Norwich Corp* [1972] Ch 438, sub nom *Re Armitage's Will Trusts* [1972] 1 All ER 708. As to the different classes of corporation, and as to the powers of corporations generally, see **CORPORATIONS**. As to the incorporation of charity trustees see PARA 260.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(1) WHAT CORPORATIONS ARE CHARITABLE CORPORATIONS/225. Colleges and hospitals.

225. Colleges and hospitals.

The two principal kinds of charitable corporations used to be hospitals and colleges, the former being created for the maintenance and relief of the poor and impotent, and the latter for the promotion of learning and the support of persons engaged in literary pursuits¹.

Colleges and hospitals, in the strict legal sense of the latter term, are both institutions where the persons benefited by the charity are themselves incorporated². The colleges of Oxford and Cambridge are eleemosynary corporations³, but the halls are not⁴. The universities of Oxford and Cambridge are civil and not eleemosynary corporations⁵. More modern universities have been founded by royal charter and are eleemosynary corporations⁶.

In other than the strict legal sense⁷, however, the expression 'hospital' has been used to denote various kinds of corporate institutions⁸ for the relief of the poor or infirm, such as corporations where the estate of inheritance only is vested in the master or warden⁹, or hospitals managed by an incorporated body of governors or trustees¹⁰.

Hospitals for the sick did not cease to be charities merely because of the coming into effect of the National Health Service Act 1946¹¹; and the chartered corporation of a hospital was not automatically dissolved thereby¹², but the Minister of Health was given power to dissolve the original corporation of a hospital which had been nationalised¹³.

1 1 Kyd on Corporations 25; *Philips v Bury* (1694) Skin 447 at 484, HL.

2 Shelford's Law of Mortmain (1836) 24; *Philips v Bury* (1694) Skin 447 at 484, HL ('if in an hospital the master and poor are incorporated, it is a college, having a common seal to act by, although it hath not the name of a college'). See also *A-G v Wyggeston's Hospital* (1853) 16 Beav 313; *A-G v St Cross Hospital* (1853) 17 Beav 435; *A-G v St John's Hospital, Bedford* (1865) 2 De GJ & Sm 621; *Sutton's Hospital Case* (1612) 10 Co Rep 1a at 23a, 31a, Ex Ch; *Lord Colchester v Kewney* (1866) 35 LJ Ex 204 at 206 per Channell B (affd (1867) LR 2 Exch 253).

3 *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647 at 1652, 1656 per Lord Aston CJ; and see *Parkinson's Case* (1689) Carth 92 at 93 per Lord King LC; *Anon* (1698) 12 Mod Rep 232; *Philips v Bury* (1694) Skin 447 at 494, HL; *Patel v University of Bradford Senate* [1978] 3 All ER 841, [1978] 1 WLR 1488 (affd [1979] 2 All ER 582, [1979] 1 WLR 1066, CA). As to the meaning of 'eleemosynary corporation' see PARA 224.

4 *R v Hertford College* (1878) 3 QBD 693 at 694, CA, per Lord Coleridge CJ.

5 *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647; *Patel v University of Bradford Senate* [1978] 3 All ER 841, [1978] 1 WLR 1488 (affd [1979] 2 All ER 582, [1979] 1 WLR 1066, CA); Shelford's Law of Mortmain 25.

6 The charters normally, probably always, provide that inter alios, the members of the academic staff and all the undergraduates are members of the university; see *Patel v University of Bradford Senate* [1978] 3 All ER 841, [1978] 1 WLR 1488 (affd [1979] 2 All ER 582, [1979] 1 WLR 1066, CA).

7 See *Sutton's Hospital Case* (1612) 10 Co Rep 1a at 31a; Shelford's Law of Mortmain 24.

8 *Moses v Marsland* [1901] 1 KB 668, DC; and see *Dean and Chapter of York v Middleborough* (1828) 2 Y & J 196 at 216 per Alexander LCB.

9 Co Litt 342a; Shelford's Law of Mortmain 24.

10 There were formerly many hospitals of this kind. The Charterhouse and Sutton's Hospital are ancient examples of this class (see *Sutton's Hospital Case* (1612) 10 Co Rep 1a). The word 'hospital' is, of course, used also in reference to unincorporated institutions or hospitals managed by unincorporated bodies of governors or trustees. Some modern hospitals are of this latter kind, especially those which have no endowment and are supported by voluntary subscriptions. For a discussion of the various meanings of the word 'hospital' see *Trustees of the Mary Clark Home v Anderson* [1904] 2 KB 645 at 653 per Channell J. As to hospitals see further **HEALTH SERVICES**.

11 *Re Frere, Kidd v Farnham Group Hospital Management Committee* [1951] Ch 27, [1950] 2 All ER 513. As to the history of the national health legislation see **HEALTH SERVICES** vol 54 (2008) PARA 3 et seq. As to the effect of nationalisation on gifts to hospitals see PARA 154.

12 *Re Kellner's Will Trusts, Blundell v Royal Cancer Hospital* [1950] Ch 46, [1949] 2 All ER 774, CA.

13 See the National Health Service Act 1977 s 129, Sch 14 para 6 (repealed); and **HEALTH SERVICES** vol 54 (2008) PARA 4.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(1) WHAT CORPORATIONS ARE CHARITABLE CORPORATIONS/226. Hospitals supported partly by fees.

226. Hospitals supported partly by fees.

Not all hospitals are charitable institutions¹. Some are managed commercially², with a view to the profit of private individuals, and there are hospitals the services of which are not available to a sufficient section of the public³. However, the mere fact that a hospital is supported by the payment of fees does not prevent its being a charitable corporation⁴, and the same is true of schools⁵. Furthermore, the Charity Commission has power to authorise the committee of management of a voluntary hospital to provide facilities for paying patients in certain circumstances⁶.

1 See *Re Smith's Will Trusts, Barclays Bank Ltd v Mercantile Bank Ltd* [1962] 2 All ER 563, [1962] 1 WLR 763, CA (revsg [1961] 3 All ER 824, [1961] 1 WLR 1387); *Re Resch's Will Trusts, Le Cras v Perpetual Trustee Co Ltd* [1969] 1 AC 514, sub nom *Le Cras v Perpetual Trustees Co Ltd* [1967] 3 All ER 915, PC.

2 *Re Resch's Will Trusts, Le Cras v Perpetual Trustee Co Ltd* [1969] 1 AC 514 at 540, sub nom *Le Cras v Perpetual Trustees Co Ltd* [1967] 3 All ER 915 at 921, PC.

3 As to the requirement of benefit to a sufficient section of the community see PARA 8.

4 *Re Resch's Will Trusts, Le Cras v Perpetual Trustee Co Ltd* [1969] 1 AC 514, sub nom *Le Cras v Perpetual Trustees Co Ltd* [1967] 3 All ER 915, PC. As to the meaning of 'charitable corporation' see PARA 224. As to contributions by beneficiaries of charity see PARA 11.

5 *The Abbey, Malvern Wells, Ltd v Ministry of Local Government and Planning* [1951] Ch 728, [1951] 2 All ER 154.

6 See the Voluntary Hospitals (Paying Patients) Act 1936; and PARA 511. As to the Charity Commission see PARAS 538-572.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(1) WHAT CORPORATIONS ARE CHARITABLE CORPORATIONS/227. Other charitable corporations.

227. Other charitable corporations.

Besides colleges and hospitals, there are other corporations created solely for the fulfilment of charitable purposes, as where charity trustees¹, governors², or the schoolmaster³, or the schoolmaster and usher⁴, have been respectively incorporated for charitable or educational objects. Charitable corporations have also in many cases been created by Act of Parliament⁵, or by registration under the Companies Acts, and by charter, to carry into effect various charitable purposes.

For the purposes of the Charities Act 1993, 'company' means a company registered under the Companies Act 2006 in England and Wales or Scotland⁶.

1 See PARA 260.

2 *Eden v Foster* (1726) 2 P Wms 325 (grammar school).

3 *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532 (cathedral school).

4 *A-G v Price* (1744) 3 Atk 108 at 109 per Lord Hardwicke LC (free school); *Re Chelmsford Grammar School* (1855) 1 K & J 543 at 561 per Page-Wood V-C.

5 Eg the RPF (ie the Royal Patriotic Fund Corporation) which was established under the Patriotic Fund Reorganisation Act 1903 (repealed), which Act was superceded by the Armed Forces (Pensions and Compensation) Act 2004 s 6; Royal Patriotic Fund Corporation (Transfer of Property, Rights and Liabilities) Order 2005, SI 2005/3308: see **ARMED FORCES**.

6 Charities Act 1993 s 97(1) (amended by SI 2009/1941). See further **COMPANIES**.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(1) WHAT CORPORATIONS ARE CHARITABLE CORPORATIONS/228. Local authorities.

228. Local authorities.

Local authorities are trustees of their corporate property for public purposes for the benefit of the ratepayers¹, and as such they are subject to the court's trust jurisdiction² and are charity trustees³; but they do not come within the definition of charitable corporations because they are not established exclusively for charitable purposes⁴.

1 *A-G v Aspinall* (1837) 2 My & Cr 613, approved in *Parr v A-G* (1842) 8 Cl & Fin 409, HL; and see *Re Brown's Mortgage, Wallasey Corpn v A-G* [1945] Ch 166, [1945] 1 All ER 397.

2 *A-G v Wilson* (1840) Cr & Ph 1; *A-G v Lichfield Corpn* (1848) 11 Beav 120; *A-G v De Winton* [1906] 2 Ch 106. See also *A-G v Newcastle-upon-Tyne Corpn and North-Eastern Rly Co* (1889) 23 QBD 492, CA. In *A-G v Aspinall* (1837) 2 My & Cr 613, the argument that the statutory remedies under the Municipal Corporations Act 1835 (repealed) ousted the court's equitable jurisdiction over breaches of trust was rejected.

3 *A-G v Dublin Corpn* (1827) 1 Bli NS 312, HL; *A-G v Liverpool Corpn* (1835) 1 My & Cr 171 at 201 per Pepys MR; *A-G v Stafford Corpn* [1878] WN 74.

4 See PARA 224. As to the transfer of powers on local government reorganisation see PARAS 268-269. As to local government reorganisation generally see further **LOCAL GOVERNMENT** para 5 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(2) FOUNDATION AND DISSOLUTION/229. Meaning of 'foundation'.

(2) FOUNDATION AND DISSOLUTION

229. Meaning of 'foundation'.

The expression 'foundation' as applied to the establishment of charitable corporations is used in two distinct senses. It denotes: (1) the incorporation of a body of persons; and (2) the original endowment of the incorporated body¹.

1 Shelford's Law of Mortmain 323-324; *Sutton's Hospital Case* (1612) 10 Co Rep 1a at 23a, 33a. As to the meaning of 'charitable corporation' see PARA 224.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(2) FOUNDATION AND DISSOLUTION/230. Modes of creation.

230. Modes of creation.

A charitable corporation may be created: (1) by royal charter¹; (2) by royal charter giving authority to the holder of an office to create corporations indefinitely²; (3) by persons acting under royal licence³; (4) by special Act of Parliament⁴; (5) under the Companies Act 2006⁵; and (6) by the Charity Commission⁶. As from a day to be appointed, a charitable incorporated organisation may be created under the Charities Act 1993 Pt VIIIA⁷.

No particular form of words need be used for the creation of a corporation by charter or Act of Parliament, provided the intention to incorporate is clear⁸.

The Crown can establish or found a corporation which has had no previous embryonic existence as an unincorporated body of persons, but as a matter of history and of practice this never occurs⁹.

1 This was the most usual form of incorporation. For examples see *Re Clergy Society* (1856) 2 K & J 615, and modern universities.

2 'In this manner the Chancellor of the University of Oxford has power by charter to erect corporations and has actually often exerted it' (1 Bl Com 474).

3 For examples see *Sutton's Hospital Case* (1612) 10 Co Rep 1a at 23a, 31a; *Ex p Kirkby Ravensworth Hospital* (1808) 15 Ves 305; *A-G v Dulwich College* (1841) 4 Beav 255.

4 Eg the Church Building Society, the Construction Industry Training Board and the other Industrial Training Boards: see *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA.

5 See generally **COMPANIES**. For examples see *Re St Hilda's Incorporated College, Cheltenham* [1901] 1 Ch 556; *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA.

6 See the Charities Act 1993 Pt VII (ss 50-62). The powers conferred by that Act replace those under the Charitable Trustees Incorporation Act 1872 (repealed). It was formerly often found more convenient to make use of the corporate capacity of the official custodian, but this use has been restricted by the Charities Act

1992: see PARAS 297-303. As to corporations formed in this way see PARA 260. As to the Charity Commission see PARAS 538-572.

7 See the Charities Act 1993 Part VIIIA (ss 69A-69Q, Sch 5B) (as prospectively added); and PARA 240 et seq.

8 *Sutton's Hospital Case* (1612) 10 Co Rep 1a at 23a, 28a; Shelford's Law of Mortmain 27.

9 *A-G v National Hospital for the Relief and Cure of the Paralysed and Epileptic* [1904] 2 Ch 252 at 256 per Kekewich J.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(2) FOUNDATION AND DISSOLUTION/231. The founder.

231. The founder.

The person providing the original endowment is usually regarded as the founder, rather than the person performing the act of incorporation¹.

If the Monarch joins with an individual in endowing a corporation, the Monarch alone is founder², but if two or more private individuals contribute to the original endowment, they together constitute the founder³. A private individual who has founded a charitable corporation does not cease to be founder by reason of the corporation being subsequently endowed by the Monarch⁴.

Where a charity is established by subscriptions the original subscribers alone are the founders. Additional contributions do not constitute a new foundation⁵.

1 *Sutton's Hospital Case* (1612) 10 Co Rep 1a at 23a, 33a; *Anon* (1698) 12 Mod Rep 232. See also *St John's College, Cambridge v Todington* (1757) 1 Burr 158 at 200 per Lord Mansfield.

2 2 Co Inst 68.

3 *Re St Leonard, Shoreditch, Parochial Schools* (1884) 10 App Cas 304 at 308, PC.

4 2 Co Inst 68.

5 *Re St Leonard, Shoreditch, Parochial Schools* (1884) 10 App Cas 304, PC.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(2) FOUNDATION AND DISSOLUTION/232. Founder's right to provide for government and administration.

232. Founder's right to provide for government and administration.

A charitable corporation, in so far as it is charitable, is the 'creature of the founder'¹. The founder may accordingly provide for the government and administration of his 'creature' and the application in perpetuity of the revenues². Moreover, he and his appointees have the perpetual right of patronage and visitation³.

However, he may not alter the corporation's constitution by increasing the number of corporators, or vary the trusts or application of the endowment or revenues⁴, unless special powers for this purpose are reserved by the charter of incorporation⁵.

It appears that if the number of members of the corporation is not originally fixed, the corporation itself may add to the number⁶.

1 *St John's College, Cambridge v Todington* (1757) 1 Burr 158. As to the meaning of 'charitable corporation' see PARA 224. As to who is the founder see PARA 231.

2 *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC; *Philips v Bury* (1694) Skin 447 at 482-483, HL.

3 As to patronage see PARA 124; and **ECCLESIASTICAL LAW** vol 14 PARA 776 et seq. As to visitation see PARA 510 et seq.

4 *A-G v Dulwich College* (1841) 4 Beav 255; and see *Ex p Bolton* (1789) 2 Bro CC 662.

5 *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647 at 1656 per Lord Mansfield; *St John's College, Cambridge v Todington* (1757) 1 Burr 158. A power to alter the corporation's statutes or byelaws does not imply a power to alter its objects or constitution: *Ex p Bolton* (1789) 2 Bro CC 662; *A-G v Dulwich College* (1841) 4 Beav 255 at 266 per Lord Langdale MR.

6 *A-G v Talbot* (1748) 3 Atk 662 at 675 per Lord Hardwicke LC.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(2) FOUNDATION AND DISSOLUTION/233. Control over chartered corporations.

233. Control over chartered corporations.

Although charitable corporations created by royal charter are the 'creatures of the Crown', yet so long as they exist and are capable of discharging their functions, they are not subject to control by the Crown except such control as is reserved by the charter¹. However, when a corporation is dissolved, or an integral part of it is gone, the Crown may grant a new charter², or on failure of objects the court may dispose of the funds *cy-près*³; the court also has jurisdiction to regulate and control by scheme a charity founded by royal charter⁴.

1 *R v Pasmore* (1789) 3 Term Rep 199. See, however, *Queen's College, Cambridge, Case* (1821) Jac 1 at 20-21 per Lord Eldon LC, where it was held that, in the case of a royal foundation, the Crown had an implied power to dispense with the statutes. As to the meaning of 'charitable corporation' see PARA 224. As to creation by royal charter see PARA 230.

2 *R v Pasmore* (1789) 3 Term Rep 199.

3 *A-G v Hicks* (1810) 3 Bro CC 166n as noted in 29 ER 468. See also the Charities Act 1993 s 15(1); and PARA 182. As to the *cy-près* doctrine see PARA 208.

4 *Re Whitworth Art Gallery Trusts, Manchester Whitworth Institute v Victoria University of Manchester* [1958] Ch 461, [1958] 1 All ER 176.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(2) FOUNDATION AND DISSOLUTION/234. Dissolution of charitable corporation.

234. Dissolution of charitable corporation.

A charitable corporation may be dissolved in the same way as any other corporation¹. When a charitable corporation has been dissolved, it is no longer in existence, notwithstanding that all its assets are still traceable and may not be applied for any other than charitable purposes².

A charitable company³ may be wound up both on the petition of any creditor or contributory or itself⁴, and also on the petition of the Attorney General⁵. Further, a petition may be presented by the Charity Commission if, after it has instituted an inquiry⁶, it is satisfied that there is or has been misconduct or mismanagement in the administration of the charity, or that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity⁷. The Commission may make an application⁸ to restore a charitable company⁹ to the register of companies¹⁰. The powers exercisable by the Commission under these provisions are exercisable by it of its own motion, but only with the agreement of the Attorney General on each occasion¹¹.

A charitable company which has been dissolved and struck off the register will not be restored to the register in order to take a legacy on a death after the date of dissolution¹². On the other hand bequests received after a charitable company has gone into liquidation but before it is formally dissolved are, unless the terms of the bequest otherwise provide, available for distribution amongst the creditors¹³.

1 See **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 432 et seq. As to the meaning of 'charitable corporation' see PARA 224.

2 *Re Stenson's Will Trusts, Carpenter v Treasury Solicitor* [1970] Ch 16, [1969] 2 All ER 517; but see *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n. See also PARA 153.

3 As to the meaning of 'company' see PARA 227.

4 See the Insolvency Act 1986 s 124; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1262.

5 Charities Act 1993 s 63(1). The powers given to the Charity Commission by s 32 (see PARA 553) to take legal proceedings do not extend to presenting a petition for the winding up of a charitable company: s 32(2). The affairs of the first company to be wound up under s 63(1) (as originally enacted in the Charities Act 1960 s 30(1) (repealed)) came before the court in *Liverpool and District Hospital for Diseases of the Heart v A-G* [1981] Ch 193, [1981] 1 All ER 994. As to the Charity Commission see PARAS 538-572.

6 See under the Charities Act 1993 s 8: see PARA 554.

7 Charities Act 1993 ss 18(1)(a), (b), 63(2) (s 18(1) amended by the Charities Act 2006, s 75(1), Sch 8 paras 96, 111(1), (2); s 63 amended by the Charities Act 2006 s 75(1), Sch 8 paras 96, 150(1), (2)).

8 See under the Companies Act 2006 s 1029 (see **COMPANIES** vol 15 (2009) PARA 1535).

9 'Charitable company' means a company which is a charity: Charities Act 1993 s 63(6). As to the meaning of 'charity' see PARA 1.

10 Charities Act 1993 s 63(3) (substituted by SI 2009/1941).

11 Charities Act 1993 s 63(5) (amended by the Charities Act 2006 Sch 8 paras 96, 150(1), (5)).

12 *Re Servers of the Blind League* [1960] 2 All ER 298, [1960] 1 WLR 564.

13 *Re ARMS (Multiple Sclerosis Research) Ltd, Alleyne v A-G* [1997] 2 All ER 679, [1997] 1 WLR 877.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(3) CORPORATE PROPERTY/235. Property is held on trust.

(3) CORPORATE PROPERTY

235. Property is held on trust.

As charitable corporations exist solely for the accomplishment of charitable purposes, they are sometimes said to be but trustees for charity¹, whether the beneficiaries are members of the corporation, as in the case of hospitals² and colleges³, or not⁴. It has accordingly been held that, in the absence of special powers, corporate property may only be invested in the manner permitted by law in respect of trust funds⁵, and the governors or directors of the corporation, though not strictly trustees themselves, are in a fiduciary position and may not receive remuneration for work done⁶.

In other cases the courts have refused to interfere with the property or affairs of a charitable corporation in the absence of a special trust⁷, but the court has jurisdiction to restrain such a corporation from applying its property in unauthorised ways, and may have other jurisdiction over its internal affairs⁸. Perhaps the true meaning of the so-called rule that the court's jurisdiction to intervene in the affairs of a charity depends on the existence of a trust is that the court has no jurisdiction to intervene unless there has been placed on the holder of the assets in question a legally binding restriction, arising either by way of trust in the strict traditional sense or, in the case of a corporate body, under the terms of its constitution, which obliges him or it to apply the assets in question for exclusively charitable purposes; for the jurisdiction of the court necessarily depends on the existence of a person or body who is subject to such obligation and against whom the court can act in personam so far as necessary for the purposes of enforcement⁹.

1 *Lydiatt v Foach* (1700) 2 Vern 410; and see *Construction Industry Training Board v A-G* [1973] Ch 173 at 187, [1972] 2 All ER 1339 at 1348, CA, per Buckley LJ. The property of non-charitable corporations is not held on trust: *Bowman v Secular Society Ltd* [1917] AC 406 at 440, HL, per Lord Parker. As to the meaning of 'charitable corporation' see PARA 224.

2 *Lydiatt v Foach* (1700) 2 Vern 410; *A-G v Wyggeston's Hospital* (1853) 16 Beav 313; *A-G v St Cross Hospital* (1853) 17 Beav 435.

3 *Thetford School Case* (1609) 8 Co Rep 130b; but see *A-G v Whorwood* (1750) 1 Ves Sen 534 at 536 obiter per Lord Hardwicke LC.

4 *Re Manchester Royal Infirmary, Manchester Royal Infirmary v A-G* (1889) 43 ChD 420; *Re Dominion Students' Hall Trust, Dominion Students' Hall Trust v A-G* [1947] Ch 183; *Soldiers', Sailors' and Airmen's Families Association v A-G* [1968] 1 All ER 448n, [1968] 1 WLR 313. See also *Re Church Army* (1906) 75 LJCh 467, CA; *The Abbey, Malvern Wells, Ltd v Ministry of Local Government and Planning* [1951] Ch 728, [1951] 2 All ER 154; and the cases cited in PARA 227.

5 *Re Manchester Royal Infirmary, Manchester Royal Infirmary v A-G* (1889) 43 ChD 420; *Soldiers', Sailors' and Airmen's Families Association v A-G* [1968] 1 All ER 448n, [1968] 1 WLR 313. In the former case, but not in the latter, the decision was based partly on the fact that the funds had been held on trust before becoming vested in the corporation.

6 *Re French Protestant Hospital* [1951] Ch 567, [1951] 1 All ER 938.

7 *A-G v Magdalen College, Oxford* (1847) 10 Beav 402, decided on the principle that matters of internal regulation were entrusted by the founder to the jurisdiction of the visitor.

8 Cf *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA; affg [1971] 3 All ER 449, [1971] 1 WLR 1303. The court's jurisdiction has always been said to depend on the existence of a trust, but a limited company or other corporation is capable of being subject to the court's charity jurisdiction and therefore of being a charity for the purpose of the Charities Act 1993: see ss 63, 96(1); and PARA 1 note 2.

9 *Liverpool and District Hospital for Diseases of the Heart v A-G* [1981] Ch 193 at 214, [1981] 1 All ER 994 at 1009-1010 per Slade J. Even when these conditions are fulfilled, the particular terms of the trust or constitution in question may operate substantially or partially to oust the jurisdiction of the court: see the Charities Act 1993 s 96(1); *Construction Industry Training Board v A-G* [1973] Ch 173 at 181-182, [1972] 2 All ER 1339 at 1343-1344, CA, per Russell LJ; *A-G v Magdalen College, Oxford* (1847) 10 Beav 402.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(4) REGULATION OF CHARITABLE COMPANIES/(i) Charitable Companies registered under the Companies Acts/236. Exemption from requirement of 'limited' as part of name.

(4) REGULATION OF CHARITABLE COMPANIES

(i) Charitable Companies registered under the Companies Acts

236. Exemption from requirement of 'limited' as part of name.

A private company¹ is exempt from the statutory requirements² relating to the use of 'limited'³ as part of the company name if it is a charity⁴.

1 As to the meaning of 'company' see PARA 227.

2 See the Companies Act 2006 s 59; and **COMPANIES** vol 14 (2009) PARA 200.

3 For companies registered in Wales the equivalent in Welsh ('cyfyngedig') is permitted: see the Companies Act 2006 s 59(2); and **COMPANIES** vol 14 (2009) PARA 200. The abbreviations 'ltd.' and 'cyf.' are also allowed: see s 59(1), (2); and **COMPANIES** vol 14 (2009) PARA 200.

4 See the Companies Act 2006 s 60(1)(a); and **COMPANIES** vol 14 (2009) PARA 201.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(4) REGULATION OF CHARITABLE COMPANIES/(i) Charitable Companies registered under the Companies Acts/237. Status of charitable company to appear on correspondence.

237. Status of charitable company to appear on correspondence.

Where a company is a charity and its name does not include the word 'charity' or the word 'charitable'¹, the fact that the company is a charity must be stated in legible characters² in (1) every location, and in every description of document or communication, in which it is required³ to state its registered name⁴; and (2) all conveyances⁵ purporting to be executed by the company⁶.

Failure to comply with these requirements without reasonable excuse is an offence by the company and every officer of the company who is in default⁷.

Any legal proceedings brought by such a company⁸ to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with these requirements must be dismissed if the defendant to the proceedings shows⁹:

- 63 (a) that he has a claim against the claimant arising out of the contract or conveyance that he has been unable to pursue by reason of the latter's failure to comply with the requirements¹⁰; or
- 64 (b) that he has suffered some financial loss in connection with the contract or conveyance by reason of the claimant's failure to comply with the requirements¹¹;

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue¹².

1 As to the meaning of 'charity' and 'charitable' generally see PARA 1.

2 Charities Act 1993 s 68(1) (s 68 substituted by SI 2008/948). Where a company's name includes the word 'elusen' or the word 'elusenol' (the Welsh equivalents of the words 'charity' and 'charitable'), the Charities Act 1993 s 68(1) does not apply in relation to any document which is wholly in Welsh: s 68(2) (as so substituted). The statement required by s 68(1) must be in English, except that, in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh if it consists of or includes the word 'elusen' or the word 'elusenol': s 68(3) (as so substituted). See also s 5; and PARA 308.

3 le required by regulations under the Companies Act 2006 s 82: see **COMPANIES** vol 14 (2009) PARA 220.

4 Charities Act 1993 s 68(1)(a) (as substituted: see note 2).

5 'Conveyance' means any instrument creating, transferring, varying or extinguishing an interest in land: Charities Act 1993 s 68(4) (as substituted: see note 2).

6 Charities Act 1993 s 68(1)(b) (as substituted: see note 2).

7 See the Charities Act 1993 s 68ZB(1) (s 68ZB added by SI 2008/948). For this purpose a shadow director of the company is treated as an officer of the company if the failure to comply is in relation to the Charities Act 1993 s 68(1)(a) (see the text and note 4) and that person would be treated as an officer of the company for the purposes of the corresponding requirement of regulations under the Companies Act 2006 s 82 (see **COMPANIES** vol 14 (2009) PARA 220); Charities Act 1993 s 68ZB(2) (as so added). As to the meaning of 'shadow director' for these purposes see the Companies Act 2006 ss 84, 251 (**COMPANIES** vol 14 (2009) PARAS 220, 479); and the Charities Act 1993 s 68ZB(4) (as so added). 'Officer' in relation to a body corporate includes a director, manager or secretary: Companies Act 2006 s 1173; Charities Act 2006 s 68ZB(4) (as so added).

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale: Charities Act 1993 s 68ZB(3) (as so added). As to the standard scale see PARA 308 note 11. As to the meaning of 'daily default fine' for these purposes see the Companies Act 2006 ss 84, 1125 (**COMPANIES** vol 14 (2009) PARA 220; **COMPANIES** vol 15 (2009) PARA 1622); and the Charities Act 1993 s 68ZB(4) (as so added).

⁸ le a company to which the Charities Act 1993 s 68 (see the text and notes 1-6) applies.

9 See the Charities Act 1993 s 68ZA(1), (2) (s 68ZA added by SI 2008/948).

¹⁰ Charities Act 1993 s 68ZA(2)(a) (as added: see note 9). The requirements referred to in the text are the requirements under s 68.

¹¹ Charities Act 1993 s 68ZA(2)(6) (as added: see note 9). The requirements referred to in the text are the requirements under s 68.

¹² Charities Act 1993 s 68ZA(2) (as added: see note 9). This does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person: s 68ZA(3) (as so added).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(4) REGULATION OF CHARITABLE COMPANIES/(i) Charitable Companies registered under the Companies Acts/238. Trusts not affected by alteration of objects.

238. Trusts not affected by alteration of objects.

A charitable company or other corporation which has power to alter its constitution cannot, by altering its objects so that it ceases to be charitable, affect the application of: (1) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired; (2) any property representing income which has accrued before the alteration is made; or (3) the income from any such property¹.

Where a charity is a company, any 'regulated alteration' is ineffective without the prior written consent of the Charity Commission². The following are regulated alterations: (a) any alteration of the company's articles of association adding, removing or altering a statement of the company's objects³; (b) any alteration of any provision of its articles of association directing the application of property of the company on its dissolution⁴; and (c) any alteration of any provision of its articles of association where the alteration would provide authorisation for any benefit⁵ to be obtained by directors or members of the company or persons connected with them⁶.

Where a company that has made a regulated alteration⁷ is required to send to the registrar of companies a copy of its articles as amended⁸, to forward to the registrar a copy of the special resolution effecting alteration⁹ or to give notice to the registrar of the amendment¹⁰, the copy or notice must be accompanied by a copy of the Commission's consent¹¹. If more than one of these provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion¹².

1 See the Charities Act 1993 s 64(1). See also *IRC v Yorkshire Agricultural Society* [1928] 1 KB 611 at 633, CA; and *Baldry v Feintuck* [1972] 2 All ER 81, [1972] 1 WLR 552, as to unincorporated associations.

2 See the Charities Act 1993 s 64(2) (substituted by the Charities Act 2006 s 31(1), (2)). As to the Charity Commission see PARAS 538-572. An appeal against a decision of the Commission to give or withhold consent under s 64(2) lies to the Charity Commission at the instance of the Attorney General, the charity trustees of the charity, the body corporate itself and any other person who is or may be affected by the decision: see the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4). The Tribunal has the power to quash the decision and (if appropriate) remit the matter to the Commission: see Charities Act 1993 Sch 1C Table col 3 (as so added).

3 Charities Act 1993 s 64(2A)(a) (s 64(2A) added by the Charities Act 2006 s 31(1), (2); Charities Act 1993 s 64(2A)(a) (substituted by SI 2009/1941).

4 Charities Act 1993 s 64(2A)(b) (as added (see note 3); amended by SI 2009/1941).

5 For these purposes benefit means a direct or indirect benefit of any nature, except that it does not include any remuneration within the meaning of the Charities Act 1993 s 73A (see PARA 332) whose receipt may be authorised under s 73A: s 64(2B)(a) (s 64(2B) added by the Charities Act 2006 s 31(1), (2)).

6 Charities Act 1993 s 64(2A)(c) (as added (see note 3); amended by SI 2009/1941). For the purposes of the Charities Act 1993 s 64(2A), the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with s 73B(5), (6) (see PARA 332), for determining whether a person is connected with a charity trustee for the purposes of s 73A (see PARA 332): s 64(2B)(b) (as added: see note 5).

7 Ie in accordance with the Charities Act 1993 s 64(2).

8 Ie as required by the Companies Act 2006 s 26 (see **COMPANIES** vol 14 (2009) PARA 236).

9 Ie as required by the Companies Act 2006 s 30 (see **COMPANIES** vol 14 (2009) PARA 231).

10 Ie as required by the Companies Act 2006 s 31 (see **COMPANIES** vol 14 (2009) PARA 240).

11 Charities Act 1993 s 64(3) (substituted by SI 2009/1941). The provisions of the Companies Act 2006 s 30(2)-(4) (offence of failing to comply with s 30) apply in relation to a failure to comply with the Charities Act 1993 s 64(3) as in relation to a failure to comply with the Companies Act 2006 s 30: Charities Act 1993 s 64(4) (added by SI 2009/1941).

12 Charities Act 1993 s 64(3A) (added by SI 2009/1941).

registered under the Companies Acts/239. Requirement of consent of Charity Commission to certain acts.

239. Requirement of consent of Charity Commission to certain acts.

Where a company is a charity¹:

- 65 (1) any approval given by its members for certain specified purposes²; and
- 66 (2) any affirmation given by its members of unapproved property transactions and loans³,

is ineffective without the prior written consent of the Charity Commission⁴.

An appeal against a decision to give or withhold such consent lies to the Tribunal⁵ at the instance of the Attorney General, the charity trustees of the Charity concerned, the body corporate itself and any other person who may be affected by the decision⁶. The Tribunal has the power to quash the decision and (if appropriate) remit the matter to the Commission⁷.

Nor may a company that is a charity do, without the prior written consent of the Commission, any act that does not require approval by its members under a listed provision of the Companies Act 2006⁸, but would require such approval but for an exemption in the provision in question that disapplies the need for approval on the part of the members of a body corporate which is a wholly-owned subsidiary of another body corporate⁹.

1 As to the meaning of 'charity' see PARA 1.

2 Charities Act 1993 s 66(1)(a) (s 66 substituted by the Companies Act 2006 s 226). The specified purposes are those of the following provisions of the Companies Act 2006: (1) s 188 (directors' long-term service contracts) (see **COMPANIES** vol 14 (2009) PARA 563); (2) s 190 (substantial property transactions with directors etc) (see **COMPANIES** vol 14 (2009) PARA 564); (3) ss 197, 198, 200 (loans and quasi-loans to directors etc) (see **COMPANIES** vol 14 (2009) PARAS 568-570); (4) s 201 (credit transactions for the benefit of directors etc) (see **COMPANIES** vol 14 (2009) PARA 571); (5) s 203 (related arrangements) (see **COMPANIES** vol 14 (2009) PARA 572); (6) s 217 (payments to directors for loss of office) (see **COMPANIES** vol 14 (2009) PARA 579); and (7) s 218 (payments to directors for loss of office: transfer of undertaking etc) (see **COMPANIES** vol 14 (2009) PARA 580); Charities Act 1993 s 66(2) (as so substituted).

3 Charities Act 1993 s 66(1)(b) (as substituted: see note 2). As to the affirmation of unapproved property transactions and loans see the Companies Act 2006 ss 196 and 214; and **COMPANIES** vol 14 (2009) PARAS 567, 577.

4 Charities Act 1993 s 66(1) (as substituted: see note 2). As to the Charity Commission see PARAS 538-572.

5 As to the Tribunal see PARA 573.

6 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

7 Charities Act 1993 Sch 1C Table Col 3 (as added: see note 6).

8 I.e. a provision listed in the Charities Act 1993 s 66(2) (see note 2): s 66A(3) (as added: see note 6).

9 Charities Act 1993 s 66A(1), (2) (s 66A added by the Companies Act 2006 s 226). If a company acts in contravention of the Charities Act 1993 s 66A, the exemption referred to must be treated as of no effect in relation to the act: s 66A(4) (as so added).

Organisations registered under the Charities Act 1993/240. Charitable incorporated organisations.

(ii) Charitable Incorporated Organisations registered under the Charities Act 1993

240. Charitable incorporated organisations.

As from a day to be appointed the following provisions have effect¹. The Charities Act 1993 makes provision for the creation and regulation of charitable² incorporated organisations or 'CIO's'³. A CIO is a body corporate⁴ constituted, registered and regulated by the Charity Commission⁵.

1 The Charities Act 1993 s 69A is added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'charitable', see PARA 1.

3 Charities Act 1993 s 69A(1) (as prospectively added: see note 1).

4 Charities Act 1993 s 69A(2) (as prospectively added: see note 1).

5 See the Charities Act 1993 ss 69B-69M; and PARA 241 et seq. As to the Charity Commission see PARAS 538-572.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(4) REGULATION OF CHARITABLE COMPANIES/(ii) Charitable Incorporated Organisations registered under the Charities Act 1993/241. Constitution and name.

241. Constitution and name.

As from a day to be appointed¹ a charitable incorporated organisation ('CIO')² must have a constitution³, a principal office in England or Wales⁴, and one or more members⁵. The constitution must state the name of the CIO⁶, its purposes⁷, whether its principal office is England or Wales⁸ and whether or not its members are liable to contribute to its assets if it is wound up, and if they are so liable up to what amount⁹. The constitution must also make provision (1) about who is eligible for membership and how a person becomes a member¹⁰; (2) about the appointment of one or more persons who are to be charity trustees of the CIO and about any condition of eligibility for appointment¹¹; and (3) containing directions about the application of property of the CIO on its dissolution¹². The constitution must provide for such other matters, and comply with such requirements, as are specified in regulations made by the Minister¹³ and must be in the form specified in regulations by the Charity Commission¹⁴ or as near to that form as the circumstances admit¹⁵.

Subject to anything in its constitution, a CIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so¹⁶ and a CIO must use and apply its property in furtherance of its purposes and in accordance with its constitution¹⁷.

The name of a CIO must appear in legible characters in every location, and in every description of document or communication, in which a charitable company would be required¹⁸ to state its registered name, and in all conveyances¹⁹ purporting to be executed by the CIO²⁰. Where the name of the CIO does not include 'charitable incorporation' or 'CIO'²¹, then its status as a CIO must be stated in legible characters in all the locations, documents communications and conveyances in which its name must appear by virtue of the statutory provisions²². Any legal

proceedings brought by a CIO to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with the requirement to disclose its name and status²³ must be dismissed if the defendant to the proceedings shows²⁴:

- 67 (a) that he has a claim against the claimant arising out of the contract or conveyance that he has been unable to pursue by reason of the failure to comply²⁵;
or
- 68 (b) that he has suffered some financial loss in connection with the contract or conveyance by reason of the failure to comply²⁶,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue²⁷.

1 The Charities Act 1993 ss 69A-69C, Sch 5B are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law the Charities Act 1993 s 69B(3), (5) had been brought into force for the purposes of exercising the power to make subordinate legislation, but no such day had been appointed for any other purposes. However the amendments made by SI 2008/948 to the Charities Act 1993 ss 69, 69C and the insertion of s 69CA came into force on 1 October 2008.

2 As to the creation of a charitable incorporated organisation see PARA 240.

3 Charities Act 1993 s 69A(3) (as prospectively added: see note 1). The constitution must be in English if its principal office is in England and must be in either English or Welsh if its principal office is in Wales: s 69B(4) (as prospectively added: see note 1).

4 Charities Act 1993 s 69A(4) (as prospectively added: see note 1).

5 Charities Act 1993 s 69A(5) (as prospectively added: see note 1). The members may be either not liable to contribute to the assets of the CIO if it is wound up or liable to do so up to a maximum amount each: s 69A(6) (as prospectively added: see note 1).

6 Charities Act 1993 s 69B(1)(a) (as prospectively added: see note 1).

7 Charities Act 1993 s 69B(1)(b) (as prospectively added: see note 1).

8 Charities Act 1993 s 69B(1)(c) (as prospectively added: see note 1).

9 Charities Act 1993 s 69B(1)(d) (as prospectively added: see note 1).

10 Charities Act 1993 s 69B(2)(a) (as prospectively added: see note 1).

11 Charities Act 1993 s 69B(2)(b) (as prospectively added: see note 1).

12 Charities Act 1993 s 69B(2)(c) (as prospectively added: see note 1).

13 Charities Act 1993 s 69B(3) (as added: see note 1). At the date at which this volume states the law no such regulations had been made.

14 As to the Charity Commission see PARAS 538-572.

15 Charities Act 1993 s 69B(5) (as added: see note 1). At the date at which this volume states the law no such regulations had been made.

16 Charities Act 1993 Sch 5B para 1(1) (as prospectively added: see note 1).

17 Charities Act 1993 Sch 5B para 2 (as prospectively added: see note 1).

18 Ie required by regulations under the Companies Act 2006 s 82: see **COMPANIES** vol 14 (2009) PARA 220.

19 Conveyance means any instrument creating, transferring, varying or extinguishing an interest in land: Charities Act 1993 s 69C(2) (as prospectively added (see note 1); and amended by SI 2008/948).

20 Charities Act 1993 s 69C(1) (as prospectively added (see note 1); and substituted by SI 2008/948).

21 Or the Welsh equivalent, 'sefydliad elusennol corfforedig' or 'SEC': Charities Act 1993 s 69C(3)(c), (4) (as prospectively added: see note 1). It is irrelevant whether or not there are full stops after each letter and whether or not capital letters are used in either the English or Welsh abbreviation: s 69C(3)(b), (4)(b) (as prospectively added: see note 1).

22 Charities Act 1993 s 69C(3), (5) (as prospectively added (see note 1); s 69C(5) amended by SI 2008/948). The statement required in the Charities Act 1993 s 69C(5) must be in English, except that in the case of a document which is otherwise wholly in Welsh the statement may be in Welsh: s 69C(6) (as prospectively added: see note 1).

23 Ie the requirement under the Charities Act 1993 s 69C: see the text and notes 18-22.

24 See the Charities Act 1993 s 69CA(1), (2) (s 69CA added by SI 2008/948). The Charities Act 1993 s 69CA does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person: s 69CA(3) (as so added).

25 Charities Act 1993 s 69CA(2)(a) (as added: see note 24).

26 Charities Act 1993 s 69CA(2)(b) (as added: see note 24).

27 Charities Act 1993 s 69CA(2) (as added: see note 24).

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242. Offences connected with CIO name and status.

As from a day to be appointed, the following provisions have effect¹. In the case of failure, without reasonable excuse, to comply with the requirements regarding name and status² an offence is committed by every charity trustee³ of the charitable incorporated organisation ('CIO')⁴ who is in default⁵, and any other person who on the CIO's behalf signs or authorises the signing of the offending document, communication or conveyance, or otherwise commits or authorises the offending act or omission⁶.

A person who holds any body out as being a CIO when it is not, however he does this, is guilty of an offence⁷, but it is a defence for a person charged with such an offence to prove that he believed on reasonable grounds that the body was a CIO⁸.

1 The Charities Act 1993 s 69D is added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed.

2 Ie the requirements under the Charities Act 1993 s 69C: see PARA 241.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 As to the creation of a charitable incorporated organisation see PARA 240.

5 As to the meaning of 'in default' for these purposes see the Companies Act 2006 ss 1121-1123 (**COMPANIES** vol 14 (2009) PARA 315); and the Charities Act 1993 s 69D(1B) (added by SI 2008/948).

6 Charities Act 1993 s 69D(1) (as prospectively added (see note 1); and substituted by SI 2008/948). A person guilty of an offence under s 69D(1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale: Charities Act 1993 s 69D(1A) (added by SI 2008/948). As to the meaning of 'daily default fine' for these purposes see the Companies Act 2006 s 1125 (**COMPANIES** vol 15 (2009) PARA 1622); and the Charities Act 1993 s 69D(1B) (as so added). As to the standard scale see PARA 308 note 11.

7 Charities Act 1993 s 69D(3) (as prospectively added: see note 1). A person guilty of such an offence is liable on summary conviction to fine not exceeding level 3 on the standard scale: s 69D(3) (as prospectively added: see note 1).

8 Charities Act 1993 s 69D(4) (as prospectively added: see note 1).

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243. Registration.

As from a day to be appointed, the following provisions have effect¹. Any one or more persons (the 'applicants') may apply to the Charity Commission² for a charitable incorporated organisation ('CIO')³ to be constituted and for its registration as a charity⁴. The applicants must supply the Commission with: (1) a copy of the proposed constitution⁵; (2) such other documents or information as may be prescribed by regulations made by the Minister⁶; and (3) such other documents or information as the Commission may require for the purposes of the application⁷.

The Commission must refuse an application for registration if it is not satisfied that the CIO would be a charity at the time it would be registered⁸, or if the CIO's proposed constitution does not comply with one or more of the statutory requirements and any regulations made thereunder⁹. The Commission may refuse such an application if the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity whether registered or not¹⁰, or if the Commission is of the opinion that the proposed name falls foul of the general statutory provisions on unsuitable charity names¹¹.

If the Commission grants an application for registration it must register the CIO to which the application relates as a charity under the register of charities¹². Upon registration, the CIO becomes by virtue of such registration a body corporate whose constitution and name are those proposed in the application and whose first member or members are the applicants¹³. All property for the time being vested in any or all of the applicants on trust for the charitable purposes of the CIO, when incorporated, becomes vested in the CIO upon its registration¹⁴.

The entry relating to a CIO's registration in the register of charities must include the date of registration¹⁵ and a note saying that it is constituted as a CIO¹⁶. A copy of the entry must be sent to the CIO at its principal office¹⁷.

An appeal against a decision of the Commission to grant or not to grant an application for the constitution of a CIO and its registration as a charity lies to the Tribunal¹⁸ at the instance of the Attorney General, or any other person who is or may be affected by the decision¹⁹. The Tribunal has the power to quash the decision, if appropriate, remit the matter to the Commission, and direct the Commission to rectify the register of charities or grant the application, as appropriate²⁰.

1 The Charities Act 1993 ss 69E-69F are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law the Charities Act 1993 s 69E(2)(b) had been brought into force for the purposes of exercising the power to make subordinate legislation, but no such day had been appointed for any other purposes.

2 As to the Charity Commission see PARAS 538-572.

3 As to the creation of a charitable incorporated organisation see PARA 240.

4 Charities Act 1993 s 69E(1) (as prospectively added: see note 1). As to the meaning of 'charity' see PARA 1.

5 Charities Act 1993 s 69E(2)(a) (as prospectively added: see note 1).

- 6 Charities Act 1993 s 69E(2)(b) (as added: see note 1). As to the meaning of 'minister' see PARA 580 note 1. As to the meaning of 'document' see PARA 260 note 2. At the date at which this volume states the law no such regulations had been made.
- 7 Charities Act 1993 s 69E(2)(c) (as prospectively added: see note 1).
- 8 Charities Act 1993 s 69E(3)(a) (as prospectively added: see note 1).
- 9 Charities Act 1993 s 69E(3)(b) (as prospectively added: see note 1). The statutory requirements are those set out in s 69B: see PARA 241.
- 10 Charities Act 1993 s 69E(4)(a) (as prospectively added: see note 1).
- 11 See the Charities Act 1993 s 69E(4)(b) (as prospectively added: see note 1). The statutory requirements are those set out in s 6(2)(b)-(e) (see PARA 309), reading s 6(2)(b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on: s 69E(4)(b) (as so prospectively added).
- 12 Charities Act 1993 s 69F(1) (as prospectively added: see note 1). As to the register see PARA 304.
- 13 See the Charities Act 1993 s 69F(2) (as prospectively added: see note 1).
- 14 See the Charities Act 1993 s 69F(3) (as prospectively added: see note 1).
- 15 Charities Act 1993 s 69F(4)(a) (as prospectively added: see note 1).
- 16 Charities Act 1993 s 69F(4)(b) (as prospectively added: see note 1).
- 17 Charities Act 1993 s 69F(5) (as prospectively added: see note 1).
- 18 As to the Tribunal see PARA 573 et seq.
- 19 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 20 Charities Act 1993 Sch 1C Table Col 3 (as added: see note 19). In the case of a decision to grant an application, the persons who made the application are not entitled to bring an appeal, but in the case of a decision not to grant an application, the persons who made the application are so entitled: Sch 1C Table.

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244. Amendment of constitution.

As from a day to be appointed, the following provisions have effect¹. A charitable incorporated organisation ('CIO')² may by resolution of its members³ amend its constitution⁴. Such a resolution must be passed by a 75 percent majority⁵ of those voting at a general meeting of the CIO or unanimously by the CIO's members otherwise than at a general meeting⁶. However, the power of a CIO to amend its constitution is not exercisable in any way which would result in the CIO's ceasing to be a charity⁷. A resolution containing an amendment which would make any regulated alteration⁸ is to that extent ineffective unless the prior written consent of the Charity Commission⁹ has been obtained to the making of the amendment¹⁰.

A CIO must send to the Commission a copy of a resolution containing an amendment to its constitution¹¹, together with a copy of the constitution as amended¹², and such other documents¹³ and information as the Commission may require¹⁴, by the end of the period of 15 days beginning with the date of passing of the resolution¹⁵. An amendment does not take effect until it has been registered¹⁶.

The Commission must refuse to register an amendment if in the opinion of the Commission the CIO had no power to make it¹⁷, or the amendment would change the name of the CIO, and the Commission could have refused an application for the constitution and registration of a CIO with the name specified in the amendment under the provisions on unsuitable names¹⁸. The Commission may refuse to register an amendment if the amendment would make a regulated alteration and the prior written consent of the Commission had not been obtained¹⁹.

An appeal against a decision of the Commission to refuse to register such an amendment lies to the Tribunal²⁰ at the instance of the Attorney General, the CIO, the charity trustees of the CIO or any other person who is or may be affected by the decision²¹. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission or direct the Commission to register the amendment²².

1 The Charities Act 1993 s 69P, Sch 5B are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed bringing into force the Charities Act 1993 s 69P or Sch 5B paras 14, 15.

2 As to the creation of a charitable incorporated organisation see PARA 240.

3 'Members', in relation to a charity with a body of members distinct from the charity trustees, means any of those members: Charities Act 1993 s 97(1) (definition added by the Charities Act 2006 Sch 8 para 174(d)).

4 Charities Act 1993 s 69P, Sch 5B para 14(1) (as prospectively added: see note 1). A single resolution may provide for more than one amendment: Sch 5B para 14(1) (as so prospectively added). The date of passing of such a resolution is the date of the general meeting at which it was passed, or if it was passed otherwise than at a general meeting, the date on which provision in the CIO's constitution or in regulations about the procedure of CIOs deems it to have been passed, but that date may not be earlier than that on which the last member agreed to it: Sch 5B para 14(3) (as prospectively added: see note 1). As to a CIO's constitution see PARA 241.

5 This percentage includes those voting by proxy or by post, if voting that way is permitted: Charities Act 1993 Sch 5B para 14(2)(a) (as prospectively added: see note 1).

6 Charities Act 1993 Sch 5B para 14(2) (as prospectively added: see note 1).

7 Charities Act 1993 Sch 5B para 14(4) (as prospectively added: see note 1). As to the meaning of 'charity' see PARA 1.

8 The following are 'regulated alterations': (1) any alteration of the CIO's purposes; (2) any alteration of any provision of the CIO's constitution directing the application of property of the CIO on its dissolution; (3) any alteration of any provision of the CIO's constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them: Charities Act 1993 s Sch 5B para 14(6) (as prospectively added: see note 1). For these purposes 'benefit' means a direct or indirect benefit of any nature, except that it does not include any remuneration within the meaning of s 73A (see PARA 332) whose receipt may be authorised under s 73A: Sch 5B para 14(7)(a) (as so prospectively added). The same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance with s 73B(5), (6) (see PARA 332): s 69P para 14(7)(a) (as so prospectively added). As to the meaning of 'charity trustees' see PARA 1 note 10.

9 As to the Charity Commission see PARAS 538-572.

10 Charities Act 1993 Sch 5B para 14(5) (as prospectively added: see note 1). Where the Commission does register such an amendment para 14(5) does not apply: Sch 5B para 15(5) (as prospectively added: see note 1).

11 Charities Act 1993 Sch 5B para 15(1) (as prospectively added: see note 1).

12 Charities Act 1993 Sch 5B para 15(1)(a) (as prospectively added: see note 1).

13 As to the meaning of 'document' see PARA 260 note 2.

14 Charities Act 1993 Sch 5B para 15(1)(b) (as prospectively added: see note 1).

15 Charities Act 1993 s 69P, Sch 5B para 15(1) (as added: see note 1). As to the date of the passing of the resolution see note 4.

16 Charities Act 1993 s 69P, Sch 5B para 15(2) (as added: see note 1).

17 Eg because the effect of making it would be that the CIO ceased to be a charity, or that the CIO or its constitution did not comply with any requirement imposed by or by virtue of this Act or any other enactment: see the Charities Act 1993 Sch 5B para 15(3)(a) (as prospectively added: see note 1).

18 Charities Act 1993 Sch 5B para 15(3) (as prospectively added: see note 1). As to the provisions on names unsuitable for a CIO see s 69E(4); and PARA 243.

19 Charities Act 1993 Sch 5B para 15(4) (as prospectively added: see note 1). See also note 10.

20 As to the Tribunal see PARA 573 et seq.

21 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

22 Charities Act 1993 Sch 1C Table Col 3 (as added: see note 21).

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245. Application for conversion into charitable incorporated organisation by charitable company or registered society.

As from a day to be appointed, the following provisions have effect¹. The Charities Act 1993 provides for the conversion of a charitable company² or a charity³ which is a registered society⁴ into a charitable incorporated organisation ('CIO')⁵. Such a conversion may not be made by a company or registered society having a share capital if any of the shares are not fully paid up⁶, or by an exempt charity⁷.

In order to apply for conversion⁸, the company or registered society must supply the Charity Commission⁹ with:

- 69 (1) a copy of a resolution¹⁰ of the company or registered society that it be converted into a CIO¹¹;
- 70 (2) a copy of the proposed constitution of the CIO¹²;
- 71 (3) a copy of a resolution of the company or registered society adopting the proposed constitution¹³;
- 72 (4) such other documents or information as may be prescribed by regulations made by the Minister¹⁴; and
- 73 (5) such other documents¹⁵ or information as the Commission may require for the purposes of the application¹⁶.

In the case of a company limited by guarantee which makes an application for conversion, whether or not it also has a share capital, the proposed constitution of the CIO must provide for the members to be liable to contribute to its assets if it is wound up, and for the amount up to which they are so liable¹⁷.

Upon any application for conversion the Charity Commission must notify the appropriate registrar¹⁸, along with such other persons, if any, as the Commission thinks appropriate in the particular case¹⁹. The Commission must consult those to whom it has given such notice about whether the application should be granted²⁰. The Minister may make provision in regulations about circumstances in which it would not be appropriate to grant an application for conversion²¹. The Commission must refuse an application for conversion if it is not satisfied that the CIO would be a charity at the time it would be registered²², or if the CIO's proposed

constitution does not comply with one or more of the statutory requirements and any regulations made thereunder²³, or in the case of an application made by a company limited by guarantee, if the CIO's proposed constitution does not comply with the statutory requirements for winding up²⁴. The Commission may refuse an application if the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity whether registered or not²⁵, or if the Commission is of the opinion that the proposed name falls foul of the general statutory provisions on unsuitable charity names²⁶, or where, having considered any representations received from those whom it has consulted²⁷, the Commission considers, having regard to any relevant regulations²⁸, that it would not be appropriate to grant the application²⁹.

An appeal against a decision of the Commission not to grant an application for the conversion of a charitable company or a registered society into a CIO and the CIO's registration as a charity lies to the Tribunal³⁰ at the instance of the Attorney General, the charity which made the application, the charity trustees of the charity or any other person who is or may be affected by the decision³¹. The Tribunal has the power to: (1) quash the decision and, if appropriate, remit the matter to the Commission; and (2) direct the Commission to grant the application³².

1 The Charities Act 1993 ss 69G-69H are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law ss 69G(5), 69H(4) had been brought into force for the purposes of exercising the power to make subordinate legislation, but no such day had been appointed for any other purposes.

2 For these purposes 'charitable company' means a company which is a charity: Charities Act 1993 s 69G(12) (as prospectively added: see note 1). As to the meaning of 'charitable' see PARA 1; and as to the meaning of 'company' see PARA 227.

3 As to the meaning of 'charity' see PARA 1.

4 I.e a registered society within the meaning of the Industrial and Provident Societies Act 1965: see the Charities Act 1993 s 69G(1)(b); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2395.

5 Charities Act 1993 s 69G(1) (as prospectively added: see note 1). As to the creation of a charitable incorporated organisation see PARA 240.

6 Charities Act 1993 s 69G(2)(a) (as added: see note 1).

7 Charities Act 1993 s 69G(2)(b) (as added: see note 1). As to exempt charities see PARAS 315-317.

8 Such an application is referred to as an 'application for conversion': Charities Act 1993 s 69G(3) (as prospectively added: see note 1).

9 As to the Charity Commission see PARAS 538-572.

10 The resolution must be a special resolution or a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution: Charities Act 1993 s 69G(6) (as prospectively added: see note 1). In the case of a company the Companies Act 2006 Pt 3 Ch 3 (ss 29-30) (see **COMPANIES**) does not apply to such a resolution: Charities Act 1993 s 69G(6A) (added by SI 2007/2194). In the case of a registered society, 'special resolution' has the meaning given in the Industrial and Provident Societies Act 1965 s 52(3) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2486); Charities Act 1993 s 69G(7) (as prospectively added: see note 1).

11 Charities Act 1993 s 69G(5)(a) (as prospectively added: see note 1).

12 Charities Act 1993 s 69G(5)(b) (as prospectively added: see note 1).

13 Charities Act 1993 s 69G(5)(c) (as prospectively added: see note 1).

14 Charities Act 1993 s 69G(5)(d) (as added: see note 1). At the date at which this volume states the law no such regulations had been made.

15 As to the meaning of 'document' see PARA 260 note 2.

- 16 Charities Act 1993 s 69G(5)(e) (as prospectively added: see note 1).
- 17 Charities Act 1993 s 69G(8) (as prospectively added: see note 1). That amount must not be less than the amount up to which they were liable to contribute to the assets of the company if it was wound up: s 69G(9) (as so prospectively added). If the amount each member of the company is liable to contribute to its assets on its winding up is £10 or less the guarantee is extinguished on the conversion of the company into a CIO and the requirements of s 69G(8), (9) do not apply: s 69G(10) (as so prospectively added).
- 18 Charities Act 1993 s 69G(4)(a) (as prospectively added: see note 1). The 'appropriate registrar' means the registrar of companies in the case of a charitable company, or the Financial Services Authority in the case of a registered society: s 64G(11). As to the registrar of companies see **COMPANIES** vol 14 (2009) PARA 131 et seq. As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 4, 6 et seq.
- 19 Charities Act 1993 s 69G(4)(b) (as prospectively added: see note 1).
- 20 Charities Act 1993 s 69H(1) (as prospectively added: see note 1).
- 21 Charities Act 1993 s 69H(4) (as added: see note 1). At the date at which this volume states the law no such regulations had been made.
- 22 Charities Act 1993 s 69H(2)(a) (as prospectively added: see note 1).
- 23 Charities Act 1993 s 69H(2)(b) (as prospectively added: see note 1). The statutory requirements are those set out in s 69B: see PARA 241.
- 24 Charities Act 1993 s 69H(2)(c) (as prospectively added: see note 1). As to the statutory requirements for winding up see the Charities Act 1993 s 69G(8), (9) (see the text and note 17).
- 25 See the Charities Act 1993 s 69H(3)(a) (as prospectively added: see note 1).
- 26 See the Charities Act 1993 s 69H(3)(b) (as prospectively added: see note 1). The statutory requirements are those set out in s 6(2)(b)-(e) (see PARA 309), reading s 6(2)(b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on: s 69E(4)(b) (as so prospectively added).
- 27 Ie under the Charities Act 1993 s 69H(1): see the text and note 20.
- 28 Ie under the Charities Act 1993 s 69H(4): see the text and note 26.
- 29 Charities Act 1993 s 69H(3)(c) (as prospectively added: see note 1).
- 30 As to the Tribunal see PARA 573 et seq.
- 31 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (Sch 1C added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 32 Charities Act 1993 Sch 1C Table Col 3 (as added: see note 31).

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246. Outcome of application for conversion by charitable company or registered society.

As from a day to be appointed, the following provisions have effect¹. If the Charity Commission² refuses an application for conversion, it must so notify the appropriate registrar³. If the Commission grants an application for conversion, it must register the charitable incorporated organisation ('CIO')⁴ to which the application related in the register of charities⁵, and send to the appropriate registrar a copy of each of the resolutions made by the converting company⁶ or registered society⁷ as part of the application⁸ and a copy of the entry in the register relating to

the CIO⁹. The registration of the CIO in the register of charities is provisional only until the appropriate registrar cancels the registration of the company or registered society¹⁰. The appropriate registrar must register the documents¹¹ sent to him by the Commission¹², cancel the registration of the company in the register of companies or of the society in the register of friendly societies¹³, and notify the Commission that he has done so¹⁴. When the appropriate registrar cancels the registration of the company or of the registered society, the company or registered society is thereupon converted into a CIO being a body corporate¹⁵ whose constitution is that proposed in the application for conversion¹⁶, whose name is that specified in the constitution¹⁷, and whose first members are the members of the converting company or society immediately before the moment of conversion¹⁸.

If the converting company or registered society had a share capital, upon the conversion of the company or registered society all the shares shall be cancelled and no former holder of any cancelled share shall have any right in respect of it after its cancellation¹⁹, but this does not affect any right which accrued in respect of a share before its cancellation²⁰.

The entry relating to a CIO's registration in the register of charities must include: (1) a note saying that it is constituted as a CIO²¹; (2) the date of registration²²; and (3) a note of the name of the company or society which was converted into the CIO²³. A copy of the entry must be sent to the CIO at its principal office²⁴.

The conversion of a charitable company or of a registered society into a CIO does not affect, in particular, any liability to which the company or registered society was subject by virtue of its being a charitable company or registered society²⁵.

1 The Charities Act 1993 ss 69H-69I are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Charity Commission see PARAS 538-572.

3 Charities Act 1993 s 69H(5) (as prospectively added: see note 1). As to the meaning of 'appropriate registrar' see PARA 245 note 18.

4 As to the creation of a charitable incorporated organisation see PARA 240.

5 Charities Act 1993 s 69I(1)(a) (as prospectively added: see note 1). As to the meaning of 'charity' see PARA 1; and as to the register of charities see PARA 304.

6 As to the meaning of 'company' see PARA 227.

7 Is a registered society within the meaning of the Industrial and Provident Societies Act 1965: see PARA 245; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2395.

8 Is the resolutions referred to under the Charities Act 1993 s 69G(5)(a), (c): see PARA 245.

9 Charities Act 1993 s 69I(1)(b) (as prospectively added: see note 1).

10 Charities Act 1993 s 69I(2) (as prospectively added: see note 1).

11 As to the meaning of 'document' see PARA 260 note 2.

12 Charities Act 1993 s 69I(3)(a) (as prospectively added: see note 1). The documents referred to in the text are sent under s 69I(1)(b): see the text and note 9.

13 Charities Act 1993 s 69I(3)(b) (as prospectively added: see note 1).

14 Charities Act 1993 s 69I(3) (as prospectively added: see note 1).

15 Charities Act 1993 s 69I(4) (as prospectively added: see note 1).

16 Charities Act 1993 s 69I(4)(a) (as prospectively added: see note 1).

- 17 Charities Act 1993 s 69I(4)(b) (as prospectively added: see note 1).
- 18 Charities Act 1993 s 69I(4)(c) (as prospectively added: see note 1).
- 19 Charities Act 1993 s 69I(5) (as prospectively added: see note 1).
- 20 Charities Act 1993 s 69I(6) (as prospectively added: see note 1).
- 21 Charities Act 1993 s 69I(7)(a) (as prospectively added: see note 1). This information is to be included only when the appropriate registrar has notified the Commission as required by the Charities Act 1993 s 69I(3) (see the text to notes 5-9): s 69I(7) (as so prospectively added).
- 22 Charities Act 1993 s 69I(7)(b) (as prospectively added: see note 1). This information is to be included only when the appropriate registrar has notified the Commission as required by s 69I(3) (see the text to notes 5-9): s 69I(7) (as so prospectively added).
- 23 Charities Act 1993 s 69I(7)(c) (as prospectively added: see note 1).
- 24 Charities Act 1993 s 69I(8) (as prospectively added: see note 1).
- 25 Charities Act 1993 s 69I(9) (as prospectively added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(4) REGULATION OF CHARITABLE COMPANIES/(ii) Charitable Incorporated Organisations registered under the Charities Act 1993/247. Application for conversion into charitable incorporated organisation by community interest company.

247. Application for conversion into charitable incorporated organisation by community interest company.

The Minister¹ may by regulations make provision for the conversion of a community interest company² into a charitable incorporated organisation ('CIO')³ and for the CIO's registration as a charity⁴. The regulations may, in particular, apply, apply with modifications specified in the regulations, or disapply, any of the relevant statutory provisions⁵.

1 As to the meaning of 'minister' see PARA 580 note 1.

2 As to community interest companies see **COMPANIES** vol 14 (2009) PARA 82. As to the meaning of 'company' see PARA 227.

3 As to the creation of a charitable incorporated organisation see PARA 240.

4 Charities Act 1993 s 69J(1) (s 69J added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1). At the date at which this volume states the law no such regulations had been made.

5 Charities Act 1993 s 69J(2) (as added: see note 4). The relevant statutory provisions are ss 69G-69I (see PARAS 245-246); and the Companies (Audit, Investigations and Community Enterprise) Act 2004 ss 53-55 (see **COMPANIES**).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(4) REGULATION OF CHARITABLE COMPANIES/(ii) Charitable Incorporated Organisations registered under the Charities Act 1993/248. Amalgamation of charitable incorporated organisations.

248. Amalgamation of charitable incorporated organisations.

As from a day to be appointed, the following provisions have effect¹. Any two or more charitable incorporated organisations² (the 'old CIOs') may apply to the Charity Commission³ to be amalgamated, and for the incorporation and registration as a charity⁴ of a new CIO (the 'new CIO') as their successor⁵. To make an application for amalgamation, the old CIOs must supply the Commission with the same information as supplied by the applicants for registration of a CIO⁶, a copy of a resolution of each of the old CIOs approving the proposed amalgamation⁷, and a copy of a resolution of each of the old CIOs adopting the proposed constitution of the new CIO⁸. The resolutions must have been passed by a 75 percent majority of those voting at a general meeting of the CIO⁹, or unanimously by the CIO's members otherwise than at a general meeting¹⁰. Each old CIO must give notice of the proposed amalgamation in the way or ways that in the opinion of its charity trustees¹¹ will make it most likely to come to the attention of those who would be affected by the amalgamation¹², and send a copy of the notice to the Commission¹³. The notice must invite any person who considers that he would be affected by the proposed amalgamation to make written representations to the Commission not later than a date determined by the Commission and specified in the notice¹⁴.

The Commission must refuse an application for amalgamation for the same reasons as it must refuse an application for registration¹⁵ or if it considers that there is a serious risk that the new CIO would be unable properly to pursue its purposes¹⁶. The Commission may refuse an application for amalgamation for the same reasons as it may refuse an application for registration¹⁷, or if it is not satisfied that the provision in the constitution of the new CIO is the same, or substantially the same, as the provision in the constitutions of each of the old CIOs about the following matters¹⁸:

- 74 (1) the purposes of the CIO¹⁹;
- 75 (2) the application of property of the CIO on its dissolution²⁰; and
- 76 (3) authorisation for any benefit²¹ to be obtained by charity trustees or members of the CIO or persons connected with them²².

If the Commission grants an application for amalgamation, it must register the new CIO in the register of charities²³ and by virtue of registration the new CIO thereupon becomes a body corporate²⁴ whose constitution is that proposed in the application for amalgamation²⁵, whose name is that specified in the constitution²⁶, and whose first members are the members of the old CIOs immediately before the new CIO was registered²⁷. Upon the registration of the new CIO all the property, rights and liabilities of each of the old CIOs become the property, rights and liabilities of the new CIO²⁸ and each of the old CIOs must be dissolved²⁹. Any gift which is expressed as a gift to one of the old CIOs and takes effect on or after the date of registration of the new CIO takes effect as a gift to the new CIO³⁰.

The entry relating to the registration in the register of the charity constituted as the new CIO must include:

- 77 (a) a note that it is constituted as a CIO³¹;
- 78 (b) the date of the charity's registration³²;
- 79 (c) a note that the CIO was formed following amalgamation, and of the name of each of the old CIOs³³.

A copy of the entry must be sent to the charity at the principal office of the new CIO³⁴.

An appeal against a decision of the Commission not to grant such an application for amalgamation lies to the Tribunal³⁵ at the instance of the Attorney General, the charity which made the application, the charity trustees of the CIOs or any other person who is or may be affected by the decision³⁶. The Tribunal has the power to: (1) quash the decision and, if appropriate, remit the matter to the Commission; and (2) direct the Commission to grant the application³⁷.

An appeal to the Tribunal also lies against a decision of the Commission to grant such an application for amalgamation, at the instance of the Attorney General or any creditor of any of the CIOs being amalgamated³⁸. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission³⁹.

- 1 The Charities Act 1993 ss 69K-69L are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed.
- 2 As to the creation of a new charitable incorporated organisation see PARA 240.
- 3 As to the Charity Commission see PARAS 538-572.
- 4 As to the meaning of 'charity' see PARA 1.
- 5 Charities Act 1993 s 69K(1) (as prospectively added: see note 1). Such an application is referred to as an 'application for amalgamation': s 69K(2) (as so prospectively added).
- 6 Ie the information which must be supplied under the Charities Act 1993 s 69E(2) (see PARA 243): s 69K(4). The provisions of s 69E(2)-(4) (see PARA 243) apply in relation to an application for amalgamation as they apply to an application for a CIO to be constituted, with 'the applicant' construed as meaning the old CIOs and references to the CIO as being to the new CIO: see s 69K(3).
- 7 Charities Act 1993 s 69K(4)(a) (as prospectively added: see note 1).
- 8 Charities Act 1993 s 69K(4)(b) (as prospectively added: see note 1).
- 9 Charities Act 1993 s 69K(5)(a) (as prospectively added: see note 1). This percentage includes those voting by proxy or by post, if voting that way is permitted: Charities Act 1993 s 69K(5)(a) (as so prospectively added). The date of passing of such a resolution is the date of the general meeting at which it was passed: s 69K(6)(a) (as so prospectively added).
- 10 Charities Act 1993 s 69K(5)(b) (as so prospectively added). The date of the passing of such a resolution is the date on which provision in the CIO's constitution or in regulations made under Sch 5b para 13 (see PARA 253 note 2) deems it to have been passed, but that date may not be earlier than that on which the last member agreed to it: s 69K(6)(b) (as so prospectively added).
- 11 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 12 Charities Act 1993 s 69K(7)(a) (as prospectively added: see note 1).
- 13 Charities Act 1993 s 69K(7)(b) (as prospectively added: see note 1).
- 14 Charities Act 1993 s 69K(8) (as prospectively added: see note 1).
- 15 Ie under the Charities Act 1993 s 69E(3) (see PARA 243): s 69K(9) (as prospectively added: see note 1). See also note 6.
- 16 Charities Act 1993 s 69K(9) (as prospectively added: see note 1).
- 17 Ie under the Charities Act 1993 s 69E(4) (see PARA 243): s 69K(10) (as prospectively added: see note 1). See also note 6.
- 18 Charities Act 1993 s 69K(10) (as prospectively added: see note 1).
- 19 Charities Act 1993 s 69K(11)(a) (as prospectively added: see note 1).
- 20 Charities Act 1993 s 69K(11)(b) (as prospectively added: see note 1).
- 21 'Benefit' means a direct or indirect benefit of any nature, except that it does not include any remuneration within the meaning of the Charities Act 1993 s 73A (see PARA 332) whose receipt may be authorised under s 73A: s 69K(12)(a) (as prospectively added: see note 1).
- 22 Charities Act 1993 s 69K(11)(c) (as prospectively added: see note 1). The same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance

with s 73B(5), (6) (see PARA 332) for determining whether a person is connected with a charity trustee for the purposes of s 73A (see PARA 332): s 69K(12)(b) (as so prospectively added).

- 23 Charities Act 1993 s 69L(1) (as prospectively added: see note 1).
- 24 Charities Act 1993 s 69L(2) (as prospectively added: see note 1).
- 25 Charities Act 1993 s 69L(2)(a) (as prospectively added: see note 1).
- 26 Charities Act 1993 s 69L(2)(b) (as prospectively added: see note 1).
- 27 Charities Act 1993 s 69L(2)(c) (as prospectively added: see note 1).
- 28 Charities Act 1993 s 69L(3)(a) (as prospectively added: see note 1).
- 29 Charities Act 1993 s 69L(3)(b) (as prospectively added: see note 1).
- 30 Charities Act 1993 s 69L(4) (as prospectively added: see note 1).
- 31 Charities Act 1993 s 69L(5)(a) (as prospectively added: see note 1).
- 32 Charities Act 1993 s 69L(5)(b) (as prospectively added: see note 1).
- 33 Charities Act 1993 s 69L(5)(c) (as prospectively added: see note 1).
- 34 Charities Act 1993 s 69L(6) (as prospectively added: see note 1).
- 35 As to the Tribunal see PARA 573 et seq.
- 36 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 37 Charities Act 1993 Sch 1C Table Col 3 (as added: see note 36).
- 38 Charities Act 1993 Sch 1C para 1(1), (2), Table Cols 1, 2 (as added: see note 36).
- 39 Charities Act 1993 Sch 1C Table Col 3 (as added: see note 36).

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249. Transfer of undertaking of charitable incorporated organisation.

As from a day to be appointed, the following provisions have effect¹. A charitable incorporated organisation ('CIO')² may resolve that all its property, rights and liabilities should be transferred to another CIO specified in the resolution³. Such a resolution must be passed by a 75 percent majority of those voting at a general meeting of the CIO⁴, or unanimously by the CIO's members otherwise than at a general meeting⁵. Where a CIO has passed such a resolution, it must send to the Charity Commission⁶ a copy of the resolution⁷, and a copy of a resolution of the transferee CIO agreeing to the transfer to it⁸. Upon receipt of the copy resolutions, the Commission may direct the transferor CIO to give public notice of its resolution in such manner as is specified in the direction⁹ and, if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the transferor CIO, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the transferor CIO¹⁰.

The resolution does not take effect until confirmed by the Commission¹¹. The Commission must refuse to confirm the resolution if it considers that there is a serious risk that the transferee CIO

would be unable properly to pursue the purposes of the transferor CIO¹². The Commission may refuse to confirm the resolution if it is not satisfied that the provision in the constitution of the transferee CIO is the same, or substantially the same, as the provision in the constitution of the transferor CIO about the following matters¹³:

- 80 (1) the purposes of the CIO¹⁴;
- 81 (2) the application of property of the CIO on its dissolution¹⁵; and
- 82 (3) authorisation for any benefit¹⁶ to be obtained by charity trustees¹⁷ or members of the CIO or persons connected with them¹⁸.

If the Commission does not notify the transferor CIO within the relevant period¹⁹ that it is either confirming or refusing to confirm the resolution, the resolution is to be treated as confirmed by the Commission on the day after the end of that period²⁰.

If the resolution is confirmed, or treated as confirmed, by the Commission then all the property, rights and liabilities of the transferor CIO become the property, rights and liabilities of the transferee CIO in accordance with the resolution²¹ and the transferor CIO must be dissolved²². Any gift which is expressed as a gift to the transferor CIO and takes effect on or after the date on which the resolution is confirmed or treated as confirmed, takes effect as a gift to the transferee CIO²³.

An appeal against a decision of the Commission not to confirm such a resolution lies to the Tribunal²⁴ at the instance of the Attorney General, the CIO, the charity trustees of the CIO, or any other person who is or may be affected by the decision²⁵. The Tribunal has to power to: (a) quash the decision and, if appropriate, remit the matter to the Commission; and (b) direct the Commission to confirm the resolution²⁶.

An appeal to the Tribunal also lies against a decision of the Commission to confirm such a resolution at the instance of the Attorney General or any creditor of the CIO²⁷. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission²⁸.

1 The Charities Act 1993 ss 69K, 69M are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed.

2 As to the creation of a charitable incorporated organisation see PARA 240.

3 Charities Act 1993 s 69M(1) (as prospectively added: see note 1).

4 Charities Act 1993 ss 69K(5), 69M(3) (as prospectively added: see note 1). This percentage includes those voting by proxy or by post, if voting that way is permitted: Charities Act 1993 ss 69K(5)(a), 69M(3) (as so prospectively added). The date of passing of such a resolution is the date of the general meeting at which it was passed: ss 69K(6)(a), 69M(3) (as so prospectively added).

5 Charities Act 1993 ss 69K(5)(b), 69M(3) (as prospectively added: see note 1). The date of the passing of such a resolution is the date on which provision in the CIO's constitution or in regulations made under Sch 5b para 13 (see PARA 253 note 2) deems it to have been passed, but that date may not be earlier than that on which the last member agreed to it: ss 69K(6)(b), 69M(3) (as so prospectively added).

6 As to the Charity Commission see PARAS 538-572.

7 Charities Act 1993 s 69M(2)(a) (as prospectively added: see note 1).

8 Charities Act 1993 s 69M(2)(b) (as prospectively added: see note 1).

9 Charities Act 1993 s 69M(4)(a) (as prospectively added: see note 1).

10 Charities Act 1993 s 69M(4)(b) (as prospectively added: see note 1).

11 Charities Act 1993 s 69M(5) (as prospectively added: see note 1).

- 12 Charities Act 1993 s 69M(6) (as prospectively added: see note 1).
- 13 Charities Act 1993 s 69M(7) (as prospectively added: see note 1).
- 14 Charities Act 1993 ss 69K(11)(a), 69M(7) (as prospectively added: see note 1).
- 15 Charities Act 1993 ss 69K(11)(b), 69M(7) (as prospectively added: see note 1).
- 16 As to the meaning of 'benefit' for these purposes see PARA 248 note 21.
- 17 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 18 Charities Act 1993 ss 69K(11)(c), 69M(7) (as prospectively added: see note 1). As to the rules which apply for determining whether a person is connected with a charity trustee or member of the CIO see PARA 248 note 22.
- 19 'Relevant period' means, in a case where the Commission directs the transferor CIO under the Charities Act 1993 s 69M(4) to give public notice of its resolution (see the text and notes 9-10), the period of six months beginning with the date when that notice is given: s 69M(9)(a) (as added: see note 1). In any other case, 'relevant period' means a period of six months beginning with the date when both of the copy resolutions referred to in s 69M(2) (see the text and notes 7-8) have been received by the Commission: s 69M(9)(b) (as so prospectively added). The Commission may at any time within the relevant period give the transferor CIO a notice extending the relevant period by such period not exceeding six months as is specified in the notice: s 69M(10) (as so prospectively added). Such a notice under must set out the Commission's reasons for the extension: s 69M(11) (as so prospectively added).
- 20 Charities Act 1993 s 69M(8) (as prospectively added: see note 1).
- 21 Charities Act 1993 s 69M(12)(a) (as prospectively added: see note 1).
- 22 Charities Act 1993 s 69M(12)(b) (as prospectively added: see note 1).
- 23 Charities Act 1993 s 69M(13) (as prospectively added: see note 1).
- 24 As to the Tribunal see PARA 573 et seq.
- 25 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 26 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added: see note 25).
- 27 Charities Act 1993 Sch 1C para 1(1), (2), Table Cols 1, 2 (as added: see note 25).
- 28 Charities Act 1993 Sch 1C Table Col 3 (as added: see note 25).

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250. Winding up, insolvency and dissolution of charitable incorporated organisation.

The Minister¹ may by regulations² make provision about the winding up of charitable incorporated organisations ('CIOs')³, their insolvency⁴, their dissolution⁵ and their revival and restoration to the register following dissolution⁶. Such regulations may, in particular, make provision:

- 83 (1) about the transfer on the dissolution of a CIO of its property and rights, including property and rights held on trust for the CIO, to the official custodian or another person or body⁷;

- 84 (2) requiring any person in whose name any stocks, funds or securities are standing in trust for a CIO to transfer them into the name of the official custodian or another person or body⁸;
- 85 (3) about the disclaiming, by the official custodian or other transferee of a CIO's property, of title to any of that property⁹;
- 86 (4) about the application of a CIO's property *cy-près*¹⁰;
- 87 (5) about circumstances in which charity trustees¹¹ may be personally liable for contributions to the assets of a CIO or for its debts¹²; and
- 88 (6) about the reversal on a CIO's revival of anything done on its dissolution¹³.

1 As to the meaning of 'minister' see PARA 580.

2 The regulations may apply any enactment which would not otherwise apply, either without modification or with modifications specified in the regulations, and disapply, or modify (in ways specified in the regulations) the application of, any enactment which would otherwise apply: Charities Act 1993 s 69N(3) (as added: see note 3). For these purposes 'enactment' includes a provision of subordinate legislation within the meaning of the Interpretation Act 1978 (see **STATUTES**): Charities Act 1993 s 69N(4) (as so added).

At the date at which this volume states the law no such regulations had been made under s 69N.

3 Charities Act 1993 s 69N(1)(a) (s 69N added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1). As to the creation of a charitable incorporated organisation see PARA 240.

4 Charities Act 1993 s 69N(1)(b) (as added: see note 3).

5 Charities Act 1993 s 69N(1)(c) (as added: see note 3).

6 Charities Act 1993 s 69N(1)(d) (as added: see note 3).

7 Charities Act 1993 s 69N(2)(a) (as added: see note 3).

8 Charities Act 1993 s 69N(2)(b) (as added: see note 3).

9 Charities Act 1993 s 69N(2)(c) (as added: see note 3).

10 Charities Act 1993 s 69N(2)(d) (as added: see note 3). As to the doctrine of *cy-près* see PARA 177 et seq.

11 As to the meaning of 'charity trustees' see PARA 1 note 10.

12 Charities Act 1993 s 69N(2)(e) (as added: see note 3).

13 Charities Act 1993 s 69N(2)(f) (as added: see note 3).

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251. Charitable incorporated organisations and third parties.

As from a day to be appointed, the following provisions have effect¹. The validity of an act done, or purportedly done, by a charitable incorporated organisation ('CIO')² must not be called into question on the ground that it lacked constitutional capacity³. Nor may the power of the charity trustees⁴ of a CIO to act so as to bind the CIO, or authorise others to do so, be called into question on the ground of any constitutional limitations on their powers⁵.

A party to an arrangement or transaction with a CIO is not bound to inquire whether it is within the CIO's constitutional capacity⁶, or as to any constitutional limitations on the powers of its charity trustees to bind the CIO or authorise others to do so⁷. If a CIO purports to transfer or

grant an interest in property, the fact that the act was beyond its constitutional capacity, or that its charity trustees in connection with the act exceeded their constitutional powers, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the CIO's act⁸.

Nothing in the foregoing provisions absolves the CIO's charity trustees from their duty to act within the CIO's constitution and in accordance with any constitutional limitations on their powers⁹. Nor does anything in the foregoing provisions prevent a person from bringing proceedings to restrain the doing of an act which would be beyond the CIO's constitutional capacity, or beyond the constitutional powers of the CIO's charity trustees¹⁰. However, no such proceedings may be brought in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the CIO¹¹.

1 The Charities Act 1993 s 69P, Sch 5B are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed bringing into force the provisions mentioned in notes 2-11.

2 As to the creation of a charitable incorporated organisation see PARA 240.

3 Charities Act 1993 s 69P, Sch 5B para 5(2) (as prospectively added: see note 1). This applies only in favour of a person who gives full consideration in money or money's worth in relation to the act in question, and does not know that the act is beyond the CIO's constitutional capacity: Sch 5B para 5(1), (4)(a) (as so prospectively added). The burden of proving that a person knew that an act was beyond the CIO's constitutional capacity lies on the person making that allegation: see Sch 5B para 5(7) (as so prospectively added). References to a CIO's lack of 'constitutional capacity' are to lack of capacity because of anything in its constitution: Sch 5B para 5(8) (a) (as so prospectively added).

4 As to the meaning of 'charity trustees' see PARA 1 note 10.

5 Charities Act 1993 s 69P, Sch 5B para 5(3) (as prospectively added: see note 1). This applies only in favour of a person who gives full consideration in money or money's worth in relation to the act in question, does not know that the act is beyond the constitutional powers of its charity trustees and who dealt with the CIO in good faith (which he is presumed to have done unless the contrary is proved): Sch 5B para 5(1), (4)(b) (as so prospectively added). The burden of proving that a person knew that an act was beyond the constitutional powers of its charity trustees, lies on the person making that allegation: Sch 5B para 5(7) (as so prospectively added). Nothing in Sch 5B para 5(3) affects any liability incurred by the CIO's charity trustees (or any one of them) for acting beyond his or their constitutional powers: Sch 5B para 7 (as so prospectively added). References to 'constitutional limitations' on the powers of a CIO's charity trustees are to limitations on their powers under its constitution, including limitations deriving from a resolution of the CIO in general meeting, or from an agreement between the CIO's members, and 'constitutional powers' is to be construed accordingly: Sch 5B para 5(8)(b) (as so prospectively added).

6 Charities Act 1993 Sch 5B para 5(5)(a) (as prospectively added: see note 1).

7 Charities Act 1993 Sch 5B para 5(5)(b) (as prospectively added: see note 1).

8 Charities Act 1993 Sch 5B para 5(6) (as prospectively added: see note 1).

9 Charities Act 1993 Sch 5B para 8 (as prospectively added: see note 1).

10 Charities Act 1993 Sch 5B para 6(1) (as prospectively added: see note 1).

11 Charities Act 1993 Sch 5B para 6(2) (as prospectively added: see note 1). This does not prevent the Charity Commission from exercising any of its powers: Sch 5B para 6(3) (as so prospectively added). As to the Charity Commission see PARAS 538-572.

252. Members and trustees of charitable incorporated organisations.

As from a day to be appointed, the following provisions have effect¹. It is the duty of each member of a charitable incorporated organisation ('CIO')², and each charity trustee³ of a CIO, to exercise his powers, and in the case of a charity trustee to perform his functions, in his capacity as such, in the way he decides, in good faith, would be most likely to further the purposes of the CIO⁴.

The CIO's charity trustees must manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO⁵. Each charity trustee of a CIO must in the performance of his functions in that capacity exercise such care and skill as is reasonable in the circumstances, having regard in particular to any special knowledge or experience that he has or holds himself out as having and, if he acts as a charity trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession⁶.

A charity trustee of a CIO may not benefit personally from any arrangement or transaction entered into by the CIO if, before the arrangement or transaction was entered into, he did not disclose to all the charity trustees of the CIO any material interest of his in it or in any other person or body party to it, whether that interest is direct or indirect⁷.

A charity trustee of a CIO is entitled to be reimbursed by the CIO, or may pay out of the CIO's funds, expenses properly incurred by him in the performance of his functions as such⁸.

If the CIO is one whose members are liable to contribute to its assets if it is wound up, then its constitution binds the CIO and its members for the time being to the same extent as if its provisions were contained in a contract to which the CIO and each of its members was a party and which contained obligations on the part of the CIO and each member to observe all the provisions of the constitution⁹. Money payable by a member to the CIO under the constitution is a debt due from him to the CIO, and is of the nature of a specialty debt¹⁰.

Subject to anything in a CIO's constitution, a trustee of the CIO may be a member but need not be; a member may be a trustee but need not be; and the membership and trustees may, but need not be, identical¹¹.

1 The Charities Act 1993 ss 69B, 69P, Sch 5B are added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1, as from a day to be appointed under s 79(2). At the date at which this volume states the law the Charities Act 1993 Sch 5B para 10 had been brought into force for the purposes of exercising the power to make subordinate legislation, but no such day had been appointed for any other purpose.

2 As to the creation of a charitable incorporated organisation see PARA 240.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities Act 1993 Sch 5B para 9 (as prospectively added: see note 1).

5 Charities Act 1993 Sch 5B para 1(2) (as prospectively added: see note 1). Subject to anything in its constitution, a CIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so: Sch 5B para 1(1) (as so prospectively added).

6 Charities Act 1993 Sch 5B para 10(1) (as prospectively added: see note 1). The Minister may make regulations permitting a CIO's constitution to provide that this duty does not apply, or does not apply in so far as is specified in the constitution: Sch 5B, para 10(2), (3) (as added: see note 1). At the date at which this volume states the law no such regulations had been made. As to the meaning of 'minister' see PARA 580.

7 Charities Act 1993 Sch 5B para 11(1) (as prospectively added: see note 1). Nothing in this provision confers authority for a charity trustee of a CIO to benefit personally from any arrangement or transaction entered into by the CIO: Sch 5B para 11(2) (as so prospectively added).

8 Charities Act 1993 Sch 5B para 12 (as prospectively added: see note 1).

9 Charities Act 1993 Sch 5B para 3 (as prospectively added: see note 1). As to the constitution of a CIO see PARA 241.

10 Charities Act 1993 Sch 5B para 4 (as added: see note 1). As to specialty debts see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 387.

11 Charities Act 1993 s 69B(6) (as prospectively added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/5. CHARITABLE CORPORATIONS/(4) REGULATION OF CHARITABLE COMPANIES/(ii) Charitable Incorporated Organisations registered under the Charities Act 1993/253. Further regulations.

253. Further regulations.

The Minister¹ may by regulations make provision about the procedure of charitable incorporated organisations ('CIOs')². Subject to any such regulations, any other requirement imposed by or by virtue of this Act or any other enactment, and anything in the CIO's constitution, a CIO may regulate its own procedure³, but this must include provision for the holding of a general meeting of its members⁴.

The Minister may by regulations make further⁵ provision about applications for registration of CIOs, the administration of CIOs, the conversion of charitable companies, registered societies and community interest companies into CIOs, the amalgamation of CIOs and in relation to CIOs generally⁶. The regulations may, in particular, make provision about⁷:

- 89 (1) the execution of deeds and documents⁸;
- 90 (2) the electronic communication of messages or documents relevant to a CIO or to any dealing with the Charity Commission in relation to one⁹;
- 91 (3) the maintenance of registers of members and of charity trustees¹⁰; and
- 92 (4) the maintenance of other registers, for example, a register of charges over the CIO's assets¹¹.

The regulations may, in relation to charities constituted as CIOs, disapply or modify the application of any of the general statutory provisions relating to the registration of charities¹².

1 As to the meaning of 'minister' see PARA 580.

2 Charities Act 1993 s 69P, Sch 5B para 13(1) (Sch 5B added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1). As to the creation of a charitable incorporated organisation see PARA 240. At the date at which this volume states the law no such regulations had been made.

3 Charities Act 1993 Sch 5B para 13(2) (as added: see note 2).

4 Charities Act 1993 Sch 5B para 13(3) (as added: see note 2). The regulations under Sch 5B para 13(1) (see the text and notes 1-2) may in particular make provision about such meetings: Sch 5B para 13(3) (as so added).

5 In order to supplement the provisions in the Charities Act 1993 ss 69A-69P, Sch 5B: see PARA 240 et seq.

6 Charities Act 1993 s 69Q (s 69Q added by the Charities Act 2006 s 34, Sch 7 Pt 1 para 1). The regulations may apply any enactment which would not otherwise apply, either without modification or with modifications specified in the regulations, disapply, or modify (in ways specified in the regulations) the application of any enactment which would otherwise apply: Charities Act 1993 ss 69N(3), 69Q(4) (as so added). For these purposes 'enactment' includes a provision of subordinate legislation within the meaning of the Interpretation Act 1978: ss 69N(4), 69Q(4) (as so added).

7 Charities Act 1993 s 69Q(2) (as added: see note 6).

- 8 Charities Act 1993 s 69Q(2)(a) (as added: see note 6). As to the meaning of 'document' see PARA 260 note 2.
- 9 Charities Act 1993 s 69Q(2)(b) (as added: see note 6). As to the Charity Commission see PARAS 538-572.
- 10 Charities Act 1993 s 69Q(2)(c) (as added: see note 6). As to the meaning of 'charity trustees' see PARA 1 note 10.
- 11 Charities Act 1993 s 69Q(2)(d) (as added: see note 6).
- 12 See the Charities Act 1993 s 69Q(3) (as added: see note 6). The general statutory provisions relating to the registration of charities are ss 3-4: see PARA 304 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/254. Eleemosynary and civil corporations.

6. TRUSTEES

(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES

254. Eleemosynary and civil corporations.

Corporations, no less than individuals, may as a rule be trustees for charitable purposes¹.

Eleemosynary corporations are trustees of their corporate property, whether their members participate in the charity or not². They may also undertake the execution of special trusts connected with the objects of their foundation³.

Civil corporations, as, for example, livery companies of the City of London⁴ and municipal corporations⁵, are in many cases also trustees of charities. Local authorities are also trustees of the municipal property⁶, and may hold property on special trusts, for example for the benefit of the borough freemen⁷.

1 *Flood's Case* (1616) Hob 136; *A-G v Tancred* (1757) 1 Eden 10 at 14 per Henley, Lord Keeper; *A-G v Master of Brentwood School* (1833) 1 My & K 376 at 390 per Leach MR; *A-G v Liverpool Corp'n* (1835) 1 My & Cr 171 at 201 per Pepys MR; *Incorporated Society in Dublin v Richards* (1841) 1 Dr & War 258 at 302-303, 307, 331 per Lord Sugden LC. For other instances of corporations acting as trustees for charities see also *Bene't (or Corpus Christi) College, Cambridge v Bishop of London* (1778) 2 Wm Bl 1182 (devise to college for charitable use); *A-G v Landerfield* (1743) 9 Mod Rep 286 (devise to hospital); *Society for Propagation of the Gospel v A-G* (1826) 3 Russ 142; *Re Manchester Royal Infirmary, Manchester Royal Infirmary v A-G* (1889) 43 ChD 420. As to the incorporation of charity trustees see PARA 260. As to the capacity of a corporation to be a trustee jointly with an individual or individuals see the Bodies Corporate (Joint Tenancy) Act 1899; *Re Thompson's Settlement Trusts, Thompson v Alexander* [1905] 1 Ch 229; and **TRUSTS** vol 48 (2007 Reissue) PARAS 609, 864; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1246.

2 *Lydiatt v Foach* (1700) 2 Vern 410 at 412 per North, Lord Keeper. As to eleemosynary corporations see PARA 224. As to where the property of charitable corporations is held on trust see PARA 235.

3 Eg in the case of educational foundations, trusts for additional fellowships (*A-G v Talbot* (1748) 3 Atk 662; *A-G v Whorwood* (1750) 1 Ves Sen 534 at 537 per Lord Hardwicke LC; *A-G v Flood* (1816) Hayes & Jo App xxi at p xxxv per Lord Brougham LC; *Re Catharine Hall, ex p Inge* (1831) 2 Russ & M 590 at 596 per Lord Eldon LC; and as to the necessity for the visitor's consent see *A-G v Master and Fellows of Catharine Hall, Cambridge* (1820) Jac 381 at 400 per Lord Eldon LC); for scholarships or prizes (*A-G v Talbot* above); for maintenance of schools connected with the foundation (*A-G v Caius College* (1837) 2 Keen 150); for presentation to livings connected with the foundation (*Green v Rutherford* (1750) 1 Ves Sen 462 at 473 per Lord Hardwicke LC).

4 *A-G v Grocers' Co* (1843) 6 Beav 526.

5 See the Municipal Corporations Act 1882 s 133 (amended by the Charities Act 2006 Sch 8 para 7); and *Colchester Corpn v Lowten* (1813) 1 Ves & B 226; *A-G v Shrewsbury Corpn* (1843) 6 Beav 220; *Viscount Gort v A-G* (1817) 6 Dow 136, HL; *Christ's Hospital v Grainger* (1848) 16 Sim 83 (on appeal (1849) 1 Mac & G 460); *Re Ludlow Charities* (1837) 3 My & Cr 262. For the position under the Municipal Corporations Act 1835 (repealed) see *A-G v Exeter Corpn* (1852) 2 De GM & G 507 at 515 per Lord St Leonards LC; and Tudor on Charities (7th Edn, 1984) pp 313, 362. See also the Charitable Trusts Act 1853 s 65 (repealed by the Municipal Corporations Act 1882 s 5, Sch 1; and see s 133); and *Re Huntingdon Municipal Charities* (1859) 27 Beav 214.

6 See PARA 228.

7 *Goodman v Saltash Corpn* (1882) 7 App Cas 633, HL; *Prestney v Colchester Corpn and A-G* (1882) 21 ChD 111.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/255. Corporations with limited capacity.

255. Corporations with limited capacity.

Corporations may have only a limited capacity for holding property on trust¹. A corporation created by or under statute² or otherwise³ for a particular purpose has no capacity beyond the object for which it was established. Local authorities may not act as trustees for an ecclesiastical charity or a charity for the relief of poverty⁴.

Real or personal property vested in a corporation passes automatically to the corporation's successors, and statutory provision has been made to deal with the problem of vacancies⁵.

1 Tudor on Charities (7th Edn, 1984) pp 362-363. It is sometimes said that colleges in universities cannot undertake trusts inconsistent with their foundation, but the cases cited as authority (*A-G v Whorwood* (1750) 1 Ves Sen 534; *A-G v Tancred* (1757) 1 Eden 10 at 15 per Henley, Lord Keeper) do not appear to justify the proposition.

2 See *National Guaranteed Manure Co v Donald* (1859) 28 LJEx 185 at 188; *Putney Overseers v London and South Western Rly Co* (1891) 60 LQB 438 at 439 per Lord Esher MR, CA, per Lord Esher MR.

3 See *Incorporated Society v Price* (1844) 1 Jo & Lat 498. The Chamberlain of the City of London is a corporation sole for the purpose of taking recognisances, obligations, etc, in trust for the portions of orphans: *Fulwood's Case* (1591) 4 Co Rep 64b, 65a; *Byrd v Wilford* (1596) Cro Eliz 464, Ex Ch.

4 Local Government Act 1972 s 139(3). 'Eleemosynary charity' (the term used in the Local Government Act 1933 s 268 (repealed) in place of 'charity for the relief of poverty') includes all charities directed to the relief of individual distress: *Re Armitage, Ellam v Norwich Corpn* [1972] Ch 438, [1972] 1 All ER 708. Gifts to local authorities on trust for such a charity do not fail owing to the trustee's incapacity: see *Re Woolnough's Will Trusts* (1959) Times, 22 October; *Re Armitage, Ellam v Norwich Corpn* above. Some local authorities have special statutory powers enabling them to act as trustees of such trusts.

5 See the Law of Property Act 1925 s 180; and **CORPORATIONS** vol 9(2) (2006 Reissue) PARAS 1154-1155, 1246. Formerly personalty could not be vested in a corporation sole as such; there is a possible doubt, on the strict construction of s 180(1), as to whether it is effective as apparently intended: see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1248. A parson, seised of property in right of his church, may be in a different position: see *Duke of Marlborough v St John* (1852) 5 De G & Sm 174; *Ecclesiastical Comrs v Wodehouse* [1895] 1 Ch 552; Littleton s 644; 1 Co Inst 300b, 341b; and cf *Power v Banks* [1901] 2 Ch 487.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/256. Churchwardens and incumbents.

256. Churchwardens and incumbents.

Churchwardens possess a quasi-corporate capacity to hold personality¹, but not realty², for church purposes³.

Under the School Sites Acts grants of land might formerly be made to the minister, churchwardens and overseers of the poor⁴, and may still, in certain circumstances, be made to the minister and churchwardens alone⁵, and their successors, as a corporation, for the charitable purposes mentioned in the Acts. Otherwise a minister and churchwardens do not, as a rule, form a corporation⁶.

Certain property⁷, that is to say certain real property held on charitable trusts for ecclesiastical purposes of the Church of England, and personal property held on permanent trusts⁸, if it is vested in an incumbent or churchwardens⁹ or in an ecclesiastical corporation sole acting as joint trustee with an incumbent or churchwardens¹⁰ or if the presently acting trustee is the parochial church council but not validly appointed¹¹, must be brought to the attention of the diocesan authority¹², with a view to being vested in the board as custodian trustee¹³. Subject to objections and representations received, the board must make a vesting declaration¹⁴ vesting the property in itself as custodian trustee¹⁵, and also a scheme for the charity's management, limited to the establishment or continuance of managing trustees¹⁶. The exercise of these powers is without prejudice to the jurisdiction of the court and the Charity Commission to make administrative schemes¹⁷.

Incumbents and churchwardens no longer¹⁸ have the capacity to acquire interests in land or personality to which the Incumbents and Churchwardens (Trusts) Measure 1964 applies¹⁹, except an interest in personality by gift or under a will, without the consent of the diocesan authority²⁰.

1 Shelford's Law of Mortmain 28; *A-G v Ruper* (1722) 2 P Wms 125; and see *Tufnell v Constable* (1838) 7 Ad & El 798.

2 Shelford's Law of Mortmain 29; *A-G v Ruper* (1722) 2 P Wms 125; *Gravenor v Hallum* (1767) Amb 643 at 644 per Lord Camden LC; *Withnell v Gartham* (1795) 6 Term Rep 388 at 396 per Lord Kenyon CJ. It is otherwise in the City of London: *Fell v Official Trustee of Charity Lands* [1898] 2 Ch 44 at 51, CA, per Lindley MR. In some early cases it appears that churchwardens were created corporations by letters patent with power to hold land: Shelford's Law of Mortmain 29; 1 Kyd on Corporations 31. As to actions by and against the churchwardens see **ECCLESIASTICAL LAW** vol 14 PARA 550.

3 Property vested in churchwardens alone was not affected by the Local Government Act 1894 (repealed) or by the Overseers Order 1927, SR & O 1927/55 (lapsed); nor did those enactments interfere with their powers, duties and liabilities, so far as they related to the affairs of the church or to charities generally. The Parochial Church Councils (Powers) Measure 1956 s 4 (see **ECCLESIASTICAL LAW** vol 14 PARA 575 et seq) gives to parochial church councils certain of the powers, duties and liabilities which the churchwardens formerly had. As to churchwardens generally see **ECCLESIASTICAL LAW** vol 14 PARA 542 et seq.

4 See the School Sites Act 1841 s 7. Overseers were abolished by the Rating and Valuation Act 1925 s 62 (as originally enacted), and their functions transferred to rating or other local authorities by s 1(2); and the Overseers Order 1927, SR & O 1927/55 (lapsed). As to charities of which overseers, as such, were, immediately before 1 April 1927, trustees either alone or jointly with any other persons, see arts 9-11 (revoked).

5 See the School Sites Act 1844 ss 4, 5.

6 In the City of London the minister and churchwardens may by custom be a corporation for the execution of charitable trusts (see Tudor on Charities (4th Edn, 1906) p 264 note (f); *A-G v Leage* [1881] WN 167, set out in Tudor on Charities (4th Edn, 1906) p 1041), or may be incorporated for such purposes by a private Act, as in the case of the vicar and churchwardens of St Martin's-in-the-Fields (1 Anne, sess 2, c xxi (1702)).

7 There are various exceptions: glebe and similar property, church movables and ornaments etc, property vested in the official custodian for charities, church educational endowments (defined in the Diocesan Education Committees Measure 1955 s 3 (repealed), see now the Diocesan Boards of Education Measure 1991 s 10), land acquired as sites of proposed churches, parsonage houses etc under the New Parishes Measure 1943 ss 16(1), (2), s 17 (see **ECCLESIASTICAL LAW** vol 14 PARAS 1081, 1110-1111), land held on a yearly tenancy or term certain

of a year or less (see the Incumbents and Churchwardens (Trusts) Measure 1964 s 2(2) (amended by the Endowments and Glebe Measure 1976 s 47(4), Sch 8)).

8 'Permanent trusts' means any trust of property which is a permanent endowment within the meaning of the Charities Act 1993 s 96(3) (see PARA 217 note 1); Incumbents and Churchwardens (Trusts) Measure 1964 s 1 (definition amended by the Charities Act 1993 s 98(1), Sch 6 para 7).

9 'Incumbent' includes any minister with a separate cure of souls but does not include a curate in charge of a conventional district: Incumbents and Churchwardens (Trusts) Measure 1964 s 1. 'Incumbent or churchwardens' means any incumbent and the churchwardens of the parish comprising the benefice of that incumbent or of any parish comprised in any united benefice of that incumbent and is deemed to refer to them or any of them jointly or severally: s 1.

10 Ie either where no present or past trustee, other than the personal representatives of a sole surviving trustee, is or has been any person other than those specified (Incumbents and Churchwardens (Trusts) Measure 1964 s 2(1)(a)) or where the presently acting trustees, whether or not validly appointed, are the persons specified, unless they are so acting in contravention of the terms of the trust (s 2(1)(b)).

11 Ie if immediately previously the trusts have been administered by an incumbent or churchwardens with or without an ecclesiastical corporation sole as joint trustee, unless they were acting in contravention of the terms of the trust: Incumbents and Churchwardens (Trusts) Measure 1964 s 2(1)(c).

12 'Diocesan authority' means the diocesan board of finance, or any existing or future body appointed by the diocesan synod to act as trustees of diocesan trust property: Incumbents and Churchwardens (Trusts) Measure 1964 s 1 (definition amended by the Synodical Government Measure 1969 s 4(7)). As to diocesan boards of finance see **ECCLESIASTICAL LAW** vol 14 PARAS 517-518.

13 See the Incumbents and Churchwardens (Trusts) Measure 1964 ss 2(1), (2) (as amended: see note 7), 3(1), (2); and **ECCLESIASTICAL LAW** vol 14 PARA 1230. 'Custodian trustee' has the same meaning as in the Public Trustee Act 1906 (see **TRUSTS** vol 48 (2007 Reissue) PARA 792 et seq): Incumbents and Churchwardens (Trusts) Measure 1964 s 1. The duties of the board of finance on its becoming aware of the existence of property falling within those provisions are laid down in the Incumbents and Churchwardens (Trusts) Measure 1964 s 3(2), Schedule (amended by the Charities Act 2006 Sch 8 para 45). The board must give notice to persons interested, including the Charity Commission, of the proposal as to vesting: see Schedule para 2 (as so amended). As to the Charity Commission see PARAS 538-572.

14 This has the effect specified in the Trustee Act 1925 s 40(1)(b) (see **TRUSTS** vol 48 (2007 Reissue) PARA 866): see the Incumbents and Churchwardens (Trusts) Measure 1964 s 3(3). Any person in whom is vested an interest to which the Measure applies but which cannot be vested in the board by a vesting declaration alone is under a duty to transfer it to the board: see s 3(4).

15 See the Incumbents and Churchwardens (Trusts) Measure 1964 s 3(2). The vesting declaration will vest subject to all trusts, charges etc affecting it: see s 3(5).

16 Incumbents and Churchwardens (Trusts) Measure 1964 Schedule para 6. The trustees should be the incumbent or churchwardens jointly with, where appropriate, an ecclesiastical corporation sole: Schedule para 6.

17 See the Incumbents and Churchwardens (Trusts) Measure 1964 s 3(6) (amended by the Charities Act 2006 Sch 8 para 43). For the jurisdiction to make administrative schemes see PARAS 177, 187.

18 Ie since 1 January 1965 (the commencement of the Incumbents and Churchwardens (Trusts) Measure 1964).

19 See text and note 7.

20 Incumbents and Churchwardens (Trusts) Measure 1964 s 4.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/257. Local education authorities.

257. Local education authorities.

A local education authority may be constituted trustee for any educational endowment or charity for purposes connected with education¹.

1 See the Education Act 1996 s 529; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1432. It appears that education authorities' statutory functions do not give them ipso facto an interest in the establishment of independent educational charities in their areas: *Re Belling, London Borough of Enfield v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105. As to the transfer of the property of registered educational charities following the coming into force of the Local Government Act 1972 see PARAS 268-269.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/258. Public Trustee and custodian trustees.

258. Public Trustee and custodian trustees.

The Public Trustee may not accept any trust exclusively for religious or charitable purposes¹ or involving the selection of charitable objects of a settlor's bounty², but this does not extend to bodies corporate entitled to act as custodian trustees under the Public Trustee Act 1906³.

1 Public Trustee Act 1906 s 2(5). As to the Public Trustee see **TRUSTS** vol 48 (2007 Reissue) PARA 766 et seq. As from 1 April 2001 the offices of the Public Trustee and the Official Solicitor were merged: see Making Changes: The Future of the Public Trust Office (The Way Forward and an Analysis of the Consultation) (available at www.publictrustee.gov.uk).

2 *Re Hampton, Public Trustee v Hampton* (1918) 88 LJCh 103.

3 See the Public Trustee Act 1906 s 4(3); and **TRUSTS** vol 48 (2007 Reissue) PARA 793. See also *Re Cherry's Trusts, Robinson v Wesleyan Methodist Chapel Purposes Trustees* [1914] 1 Ch 83. As to corporations entitled to act as custodian trustees see the Public Trustee Rules 1912, SR & O 1912/348, r 30; and **TRUSTS** vol 48 (2007 Reissue) PARA 794.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/259. Non-corporate bodies.

259. Non-corporate bodies.

A Roman Catholic bishop¹, a dissenting minister², a principal of a college, a mayor or bailiff of a city³, or the officers of a corporate body⁴, and their respective successors, are not recognised by the law as corporations, and consequently cannot be trustees for charitable purposes in a corporate capacity, though the particular individuals named may act as trustees⁵.

1 *A-G v Power* (1809) 1 Ball & B 145 at 149 per Lord Manners LC; and see *Re Lalor's goods* (1901) 85 LT 643.

2 *A-G for Ireland v Lee* (1869) IR 4 Eq 84.

3 *A-G v Gilbert* (1847) 10 Beav 517.

4 *A-G v Tancred* (1757) 1 Eden 10 at 14 per Henley, Lord Keeper.

5 See the cases cited in notes 2-4.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/260. Certificates of incorporation of charity trustees as a body corporate.

260. Certificates of incorporation of charity trustees as a body corporate.

Where the trustees¹ of a charity apply² to the Charity Commission for a certificate of incorporation of the trustees as a body corporate, and the Commission considers that the incorporation of the trustees would be in the interests of the charity, the Commission may grant such a certificate, subject to such conditions or directions³ as it thinks fit to insert in it⁴. The Commission must not, however, grant such a certificate in a case where the charity appears to it to be required to be registered⁵ but is not so registered⁶. On the grant of such a certificate the trustees of the charity become a body corporate by such name as is specified in the certificate and any relevant rights or liabilities of those trustees become⁷ rights or liabilities of that body⁸. A certificate of incorporation is conclusive evidence that all the preliminary requirements for incorporation⁹ have been complied with, and the date of incorporation mentioned in the certificate is deemed to be the date at which incorporation has taken place¹⁰.

The certificate of incorporation vests in the body corporate all real and personal estate, of whatever nature or tenure, belonging to or held by any person or persons in trust for the charity, and thereupon any person or persons in whose name or names any stocks, funds or securities are standing in trust for the charity, must transfer them into the name of the body corporate, but this does not apply to property vested in the official custodian¹¹.

After their incorporation the trustees may sue and be sued in their corporate name, and have the same powers, and are subject to the same restrictions and limitations, as respects the holding, acquisition and disposal of property for or in connection with the purposes of the charity as they had or were subject to while unincorporated¹². Any relevant legal proceedings¹³ that might have been continued or commenced by or against the trustees may be continued or commenced by or against them in their corporate name¹⁴. After a certificate of incorporation has been granted all trustees of the charity, notwithstanding their incorporation, are chargeable for such property as comes into their hands, and are answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, in the same manner and to the same extent as if no such incorporation had been effected¹⁵. After the incorporation of the trustees of any charity, every donation, gift and disposition of property, real or personal, lawfully made before the incorporation but not having actually taken effect, or thereafter lawfully made, by deed, will or otherwise to or in favour of the charity, or the trustees of the charity, or otherwise for the purposes of the charity, take effect as if made to or in favour of the incorporated body¹⁶ or otherwise for the like purposes¹⁷.

The Commission may amend a certificate of incorporation either on the application of the incorporated body to which it relates or of its own motion¹⁸. Before making any such amendment of their own motion, the Commission must by notice in writing inform the trustees of the relevant charity¹⁹ of its proposals, and invite those trustees to make representations to it within a time specified in the notice, being not less than one month from the date of the notice²⁰. The Commission must take into consideration any representations made by those trustees within the time so specified, and may then (without further notice) proceed with its proposals either without modification or with such modifications as appear to it to be desirable²¹. The Commission may amend a certificate of incorporation either by making an order specifying the amendment or by issuing a new certificate of incorporation taking account of the amendment²².

The Commission must keep a record of all applications for, and certificates of, incorporation and must preserve all documents sent to it under these provisions²³.

An appeal against a decision of Commission to grant or not to grant a certificate of incorporation²⁴, to amend a certificate of incorporation, or not to amend a certificate of incorporation²⁵ lies to the Tribunal²⁶ at the instance of the Attorney General, the trustees of the charity, or any other person who is affected or may be affected by the decision or, as the case may be, the amended certificate or incorporation²⁷. In the case of a decision to grant or not to grant a certificate of incorporation, the Tribunal has the power to quash the decision, or any conditions or directions inserted in the certificate, and, if appropriate, remit the matter to the Commission²⁸. In the case of a decision to amend a certificate of incorporation, the Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission²⁹. In the case of a decision not to amend a certificate of incorporation, the Tribunal has the power to do any of the following: (1) quash the decision and, if appropriate, remit the matter to the Commission; (2) make any order the Commission could itself have made under the provisions above³⁰.

1 For the purposes of the Charities Act 1993 Pt VII (ss 50-62), 'trustees' means the charity trustees (see PARA 1 note 10): s 62.

2 Every application to the Charity Commission for a certificate of incorporation must be in writing and signed by the trustees of the charity concerned and be accompanied by such documents or information as the Commission may require for the purpose of the application: Charities Act 1993 s 52(1) (amended by the Charities Act 2006 Sch 8 para 144(2)). The Commission may require any statement contained in any such application, or any document or information so supplied to be verified in such manner as it may specify: Charities Act 1993 s 52(2) (amended by the Charities Act 2006 Sch 8 para 144(3)). 'Document' includes information recorded in any form, and, in relation to information recorded otherwise than in legible form, any reference to its production is to be construed as a reference to the furnishing of a copy of it in legible form, and any reference to the furnishing of a copy of, or extract from, it is accordingly to be construed as a reference to the furnishing of a copy of, or extract from, it in legible form: Charities Act 1993 s 97(2). As to the Charity Commission see PARAS 538-572. As to the meaning of 'charity' see PARA 1.

Before a certificate of incorporation is granted, trustees of the charity must have been effectually appointed to the satisfaction of the Commission: s 53(1) (amended by the Charities Act 2006 Sch 8 para 145).

3 All conditions and directions inserted in any certificate of incorporation are binding upon and performed or observed by the trustees as trusts of the charity, and the Charities Act 1993 s 88 (see PARA 551) (enforcement of orders of the Commission) applies to any trustee who fails to perform or observe any such condition or direction as it applies to a person guilty of disobedience to any such order of the Commission as is mentioned in that provision: s 58 (amended by the Charities Act 2006 Sch 8 para 148).

4 Charities Act 1993 s 50(1) (amended by the Charities Act 2006 Sch 8 para 143(2)(a), (b)).

5 Ie under the Charities Act 1993 s 3A: see PARA 304 et seq.

6 Charities Act 1993 s 50(2) (amended by the Charities Act 2006 Sch 8 para 143(2), (c), (3)).

7 Ie without prejudice to the Charities Act 1993 s 54: see the text and note 15.

8 Charities Act 1993 s 50(3). 'Relevant rights or liabilities' means rights or liabilities in connection with any property vesting in the body corporate under s 51 (see the text and note 11): s 50(6). A body incorporated under s 50 need not have a common seal: s 50(5).

Where a certificate of incorporation is granted vacancies in the number of the trustees of the charity must from time to time be filled up so far as required by the constitution or settlement of the charity, or by any conditions or directions in the certificate, by such legal means as would have been available for the appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as required by such conditions or directions: s 53(2).

9 Ie under the Charities Act 1993 Pt VII (ss 50-62).

10 Charities Act 1993 s 55.

11 Charities Act 1993 s 51. As to the official custodian see PARA 297 et seq.

12 Charities Act 1993 s 50(4)(a), (b).

13 For these purposes, 'relevant legal proceedings' means legal proceedings in connection with any property vesting in the body corporate under the Charities Act 1993 s 51 (see the text and note 11): s 50(6).

14 Charities Act 1993 s 50(4).

15 Charities Act 1993 s 54.

16 For these purposes, 'incorporated body' means a body incorporated under the Charities Act 1993 s 50 (see the text and notes 1-8, 12-14): s 62.

17 Charities Act 1993 s 59.

18 Charities Act 1993 s 56(1) (amended by the Charities Act 2006 Sch 8 para 146(2)).

19 For these purposes, 'relevant charity', in relation to an incorporated body, means the charity the trustees of which have been incorporated as that body: Charities Act 1993 s 62.

20 Charities Act 1993 s 56(2) (amended by the Charities Act 2006 Sch 8 para 146(3)).

21 Charities Act 1993 s 56(3) (amended by the Charities Act 2006 Sch 8 para 146(4)).

22 Charities Act 1993 s 56(4) (amended by the Charities Act 2006 Sch 8 para 146(5)).

23 Charities Act 1993 s 57(1) (amended by the Charities Act 2006 Sch 8 para 147(2)). Any person may inspect such documents, under the direction of the Commission, and any person may require a copy or extract of any such document to be certified by a certificate signed by the secretary of the Commission: Charities Act 1993 s 57(2) (amended by the Charities Act 2006 Sch 8 para 147(3)).

24 I.e. a decision of the Commission to grant or not to grant a certificate of incorporation under the Charities Act 1993 s 50(1).

25 I.e. a decision of the Commission to amend or not to amend a certificate of incorporation of a charity under the Charities Act 1993 s 56(4).

26 As to the Tribunal see PARA 573 et seq.

27 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

28 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (as added: see note 27).

29 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (as added: see note 27).

30 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (as added: see note 27).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(1) CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES/261. Execution of documents by incorporated body.

261. Execution of documents by incorporated body.

There are provisions which have effect as respects the execution of documents by an incorporated body¹.

If an incorporated body has a common seal, a document² may be executed by the body by the affixing of its common seal³.

Whether or not it has a common seal, a document may be executed by an incorporated body either: (1) by being signed by a majority of the trustees of the relevant charity and expressed, in whatever form of words, to be executed by the body⁴; or (2) by being executed in pursuance of an authority conferred⁵ by the trustees of the relevant charity⁶. Such an authority (a) suffices for any document if it is given in writing or by resolution of a meeting of the trustees of the

relevant charity, notwithstanding the want of any formality that would otherwise⁷ be required in giving an authority⁸; (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way⁹; (c) subject to any such restriction, and until it is revoked has effect, notwithstanding any change in the trustees of the relevant charity, as a continuing authority given by the trustees from time to time of the charity and exercisable by such trustees¹⁰.

A document duly executed by an incorporated body which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it is to be presumed, unless a contrary intention is proved, to be delivered upon its being so executed¹¹.

In favour of a purchaser¹² a document is deemed to have been duly executed by such a body if it purports to be signed by a majority of the trustees of the relevant charity, or by such of the trustees of the relevant charity as are authorised by the trustees of that charity to execute it in the name and on behalf of the body¹³. Where the document makes it clear on its face that it is intended by the person or persons making it to be a deed, it is deemed to have been delivered upon its being executed¹⁴.

1 Charities Act 1993 s 60(1). As to the meaning of 'incorporated body' see PARA 260 note 16.

2 As to the meaning of 'document' see PARA 260 note 2.

3 Charities Act 1993 s 60(2).

4 Charities Act 1993 s 60(3)(a).

5 The trustees of the relevant charity in the case of an incorporated body may, subject to the trusts of the charity, confer on any two or more of their number a general authority, or an authority limited in such manner as the trustees think fit, to execute in the name and on behalf of the body documents for giving effect to transactions to which the body is a party: Charities Act 1993 s 60(4). In any such authority to execute a document in the name and on behalf of an incorporated body there is, unless the contrary intention appears, implied authority also to execute it for the body in the name and on behalf of the official custodian or of any other person, in any case in which the trustees could do so: s 60(6). As to the meaning of 'trusts' see PARA 217 note 5. As to the meaning of 'trustees' see PARA 260 note 1. As to the meaning of 'relevant charity' see PARA 260 note 19. As to the official custodian see PARA 297 et seq.

6 Charities Act 1993 s 60(3)(b).

7 Ie apart from the Charities Act 1993 s 60(4): see note 5.

8 Charities Act 1993 s 60(5)(a).

9 Charities Act 1993 s 60(5)(b).

10 Charities Act 1993 s 60(5)(c).

11 Charities Act 1993 s 60(7).

12 For these purposes, 'purchaser' means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property: Charities Act 1993 s 60(8).

13 Charities Act 1993 s 60(8).

14 Charities Act 1993 s 60(8).

262. Power of Charity Commission to dissolve incorporated body.

Where the Charity Commission¹ is satisfied: (1) that an incorporated body² has no assets or does not operate³; or (2) that the relevant charity⁴ in the case of an incorporated body has ceased to exist⁵; or (3) that the institution⁶ previously constituting, or treated by the Commission as constituting, any such charity has ceased to be, or, as the case may be, was not at the time of the body's incorporation, a charity⁷; or (4) that the purposes of the relevant charity in the case of an incorporated body have been achieved so far as is possible or are in practice incapable of being achieved⁸, the Commission may of its own motion make an order dissolving the body as from such date as is specified in the order⁹.

Where the Commission is satisfied, on the application of the trustees¹⁰ of the relevant charity in the case of an incorporated body, that it would be in the interests of the charity for that body to be dissolved, the Commission may make an order dissolving the body as from such date as is specified in the order¹¹.

An order made under these provisions with respect to an incorporated body has the effect of vesting in the trustees of the relevant charity, in trust for that charity, all property for the time being vested in the body, or in any other person, apart from the official custodian¹², in trust for that charity¹³. If the Commission so directs in the order (a) all or any specified¹⁴ part of that property vests, instead of vesting in the trustees of the relevant charity, in a specified person as trustee for, or nominee of, that charity, or in such persons (other than the trustees of the relevant charity) as may be specified¹⁵; (b) any specified investments, or any specified class or description of investments, held by any person in trust for the relevant charity must be transferred to the trustees of that charity, or to any such person or persons as is or are mentioned in head (a) above¹⁶.

In relation to certain orders¹⁷ which are made with respect to an incorporated body, any rights or liabilities of the body become rights or liabilities of the trustees of the relevant charity, and any legal proceedings that might have been continued or commenced by or against the body may be continued or commenced by or against those trustees¹⁸.

Any order made by the Commission under these provisions may be varied or revoked by a subsequent order so made¹⁹.

An appeal against such an order lies to the Tribunal²⁰ at the instance of the Attorney General, the trustees of the charity, the charity itself, or any other person who is or may be affected by the order²¹. The Tribunal has the power to do any of the following: (i) quash the order and, if appropriate, remit the matter to the Commission; (ii) substitute for the order any other order which could have been made by the Commission; (iii) add to the order anything which could have been contained in an order made by the Commission²².

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'incorporated body' see PARA 260 note 16.

3 Charities Act 1993 s 61(1)(a).

4 As to the meaning of 'relevant charity' see PARA 260 note 19.

5 Charities Act 1993 s 61(1)(b).

6 As to the meaning of 'institution' see PARA 1.

7 Charities Act 1993 s 61(1)(c) (amended by the Charities Act 2006 Sch 8 para 149(2)).

8 Charities Act 1993 s 61(1)(d).

9 Charities Act 1993 s 61(1) (amended by the Charities Act 2006 Sch 8 para 149(2)). A person guilty of disobedience to an order of the Commission under the Charities Act 1993 s 61 may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court: s 88(a) (amended by the Charities Act 2006 Sch 8 para 167(2)). The power of the Commission to discharge an order at any time within 12 months after it has been made does not apply to orders under the Charities Act 1993 s 61: see s 89(3); and PARA 549. As to orders of the Commission generally see s 89; and PARA 549.

10 As to the meaning of 'trustees' see PARA 260 note 1.

11 Charities Act 1993 s 61(2) (amended by the Charities Act 2006 Sch 8 para 149(3)).

12 As to the official custodian see PARA 297 et seq.

13 Charities Act 1993 s 61(3).

14 For these purposes, 'specified' means specified by the Commission in the order: Charities Act 1993 s 61(4) (amended by the Charities Act 2006 Sch 8 para 149(4)).

15 Charities Act 1993 s 61(4)(a).

16 Charities Act 1993 s 61(4)(b).

17 In any order under the Charities Act 1993 s 61 by virtue of which: (1) any property vested as mentioned in s 61(3) (see the text and notes 12-13) is vested in the trustees of the relevant charity, or in any person as trustee for, or nominee of, that charity; or (2) any investments held by any person in trust for the relevant charity are required to be transferred to the trustees of that charity, or to any person as trustee for, or nominee of, that charity: s 61(6).

18 Charities Act 1993 s 61(5).

19 Charities Act 1993 s 89(5) (added by the Charities Act 2006 Sch 8 para 168(6)).

20 As to the Tribunal see PARA 573 et seq.

21 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

22 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(2) TRUSTEES OF PAROCHIAL AND DIOCESAN CHARITIES/263. Parochial recreation grounds and allotments.

(2) TRUSTEES OF PAROCHIAL AND DIOCESAN CHARITIES

263. Parochial recreation grounds and allotments.

Trustees who hold property for the purposes of a public recreation ground or of allotments for the benefit of the inhabitants of a parish¹ having a parish council² or for other charitable purposes (except those of an ecclesiastical charity³) connected with such a parish may transfer the property to the parish council or to persons appointed by the council, provided that the Charity Commission⁴ approves and the council consents⁵. The council or its appointees take the property on the same trusts and subject to the same conditions as the trustees did⁶.

An appeal against a decision of the Commission to withhold approval for such a transfer lies to the Tribunal⁷ at the instance of the Attorney General, the trustees, the parish council or any other person who is or may be affected by the decision⁸. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission⁹.

- 1 Or, in Wales, a community: Charities Act 1993 s 79(7)(a). As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.
- 2 Or, in Wales, a community council: Charities Act 1993 s 79(7)(a).
- 3 As to the meaning of 'ecclesiastical charity' see PARA 264 note 4.
- 4 As to the Charity Commission see PARAS 538-572.
- 5 Charities Act 1993 s 79(1) (amended by the Charities Act 2006 Sch 8 para 161(2)). This provision applies to property held for any public purposes as it applies to property held for charitable purposes: Charities Act 1993 s 79(1) (as so amended). Such a transfer of any property does not operate as a breach of any covenant or condition against alienation or give rise to a forfeiture: see PARA 187 note 6.
Section 79 does not affect the trusteeship, control or management of any foundation or voluntary school within the meaning of the School Standards and Framework Act 1998: Charities Act 1993 s 79(9) (substituted by Education Act 1996 s 582(1), Sch 37 para 119; and amended by the School Standards and Framework Act 1998 s 140(1), Sch 39 para 49). See **EDUCATION** vol 15(1) (2006 Reissue) PARA 104. As to limitations on the provisions of the Charities Act 1993 s 79 see s 79(10); and PARA 265 note 2.
- 6 Charities Act 1993 s 79(1) (as amended: see note 5).
- 7 As to the Tribunal see PARA 573 et seq.
- 8 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 9 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

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264. Local representatives as trustees of rural parochial charities.

If the charity trustees¹ of a parochial charity² in a parish³, other than an ecclesiastical charity⁴ or one founded less than 40 years previously, do not include persons elected by the local government electors, ratepayers⁵ or parish inhabitants or appointed by the parish council⁶ or meeting, the council or meeting may appoint additional charity trustees to such number as the Charity Commission may allow⁷. If there is only a sole charity trustee of such a charity and he is not so elected or appointed, the Commission may approve the increase of the number of trustees to three, of whom one may be nominated by the person holding the office of the sole trustee and one by the council or meeting⁸.

Trustees appointed under this provision hold office for four years and are eligible for re-appointment on retiring⁹.

- 1 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 2 'Parochial charity' means, in relation to any parish or, in Wales, community, a charity the benefits of which are, or the separate distribution of the benefits of which is, confined to the inhabitants of the parish or community, or of a single ancient ecclesiastical parish which included that parish or community or part of it, or of an area consisting of that parish or community with not more than four neighbouring parishes or communities: Charities Act 1993 s 96(1).
- 3 Or, in Wales, a community: Charities Act 1993 s 79(7)(a). As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.
- 4 'Ecclesiastical charity' includes a charity the endowment of which is held for one or more of the following purposes: (1) for any spiritual purpose which is a legal purpose; or (2) for the benefit of any spiritual person or

ecclesiastical officer as such; or (3) for use (if a building) as a church, chapel, mission room or Sunday school or otherwise by any particular church or denomination, and any building which in the Charity Commissions' opinion has been erected or provided within 40 years before 5 March 1894 mainly by or at the cost of members of any particular church or denomination; or (4) for the maintenance, repair or improvement of any such building or for the maintenance of divine service in it; (5) otherwise for the benefit of any particular church or denomination or any of its members as such: Local Government Act 1894 s 75(2) (amended by the Charities Act 2006 Sch 8 para 9); applied by the Charities Act 1993 s 96(1). Where any endowment of a charity, other than a building held for any of the above purposes, is held in part only for some of the above purposes, the charity is an ecclesiastical charity so far as that endowment is concerned: Local Government Act 1894 s 75(2) proviso (as so applied).

5 Domestic rates were abolished by the Local Government Finance Act 1988 and replaced by the community charge, itself replaced by the council tax in 1993: see the Local Government Finance Act 1992; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

6 Or, in Wales, the community council: Charities Act 1993 s 79(7)(a).

7 Charities Act 1993 s 79(2) (amended by the Charities Act 2006 Sch 8 para 161(3)). The Charities Act 1993 s 79 does not affect the trusteeship, control or management of any foundation or voluntary school: see PARA 263 note 5. As to limitations on the provisions of the Charities Act 1993 s 79 see s 79(10); and PARA 265 note 2.

8 Charities Act 1993 s 79(2).

9 Charities Act 1993 s 79(8). If no previous appointment has been made under s 79(2) or the corresponding provision of the Local Government Act 1894 or the Charities Act 1960, and more than one trustee is appointed, half of those appointed must be appointed for a term of two years: Charities Act 1993 s 79(8)(a). Appointments to fill casual vacancies are for the remainder of the term of the previous appointment: s 79(8)(b).

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265. Appointment of trustees of parochial charities.

Before the passing of the Local Government Act 1894, the inhabitants of a rural parish, in vestry or not, or a select vestry were sometimes entitled to appoint charity trustees¹ for, or trustees or beneficiaries of, a charity². In such a case (other than as regards ecclesiastical charities³) where the parish⁴ has a parish council⁵, the appointment is now to be made by the parish council⁶ or, in the case of beneficiaries, by persons appointed by the parish council⁷, and where the parish⁸ does not have a parish council⁹, the appointment is to be made by the parish meeting¹⁰.

In some cases, before the passing of the Local Government Act 1894, overseers as such or churchwardens as such were charity trustees of or trustees for parochial charities in rural parishes, alone or jointly with others¹¹. In such a case (other than as regards ecclesiastical charities) the former overseer or churchwarden trustees are replaced by trustees appointed by the parish council¹² or, if there is no parish council¹³, by the parish meeting¹⁴, to a number not greater than that of the former overseer or churchwarden trustees¹⁵.

If, before 1 April 1927¹⁶, outside Greater London (other than the outer London boroughs) overseers of a parish as such were charity trustees of or trustees for any charity, alone or jointly, they are replaced by trustees appointed by the parish council¹⁷ or, if there is none, by the parish meeting¹⁸, to a number not greater than that of the former overseer trustees¹⁹. Where after 1 April 1974 an existing urban parish is not comprised in a parish, the power of appointing trustees rests with the district council²⁰.

Charity trustees and trustees for a charity appointed under these provisions must be appointed for four years, but are eligible for re-appointment on retiring²¹.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 Charities Act 1993 s 79(3). As to the meaning of 'charity' see PARA 1.

Section 79 does not affect the trusteeship, control or management of any foundation or voluntary school: see PARA 263 note 5. It does not extend to the Isles of Scilly, and they have effect subject to orders made under any enactment relating to local government with respect to local government areas or to the powers of local authorities: s 79(10).

3 As to the meaning of 'ecclesiastical charity' see PARA 264 note 4.

4 Or, in Wales, a community: see the Charities Act 1993 s 79(7)(b). As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

5 Or, in Wales a community council: see the Charities Act 1993 s 79(7)(b).

6 See note 5.

7 See note 5.

8 See note 5.

9 See note 5.

10 Charities Act 1993 s 79(3), (11). In relation to Wales, the reference to the parish council in the text is substituted with a reference to council of the county or, as the case may be, county borough: s 79(7)(b) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 101(4)). In other cases persons such as the rector and the lord of the manor were trustees, together with overseers or churchwardens; in such cases they seem to continue as trustees, together with persons appointed by the parish council in place of the churchwardens or overseers.

11 Charities Act 1993 s 79(4).

12 Or, in Wales, a community council: Charities Act 1993 s 79(7)(c).

13 See note 12.

14 Or, in Wales, council of the county or, as the case may be, county borough: Charities Act 1993 s 79(7)(c) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 101(4)).

15 Charities Act 1993 s 79(4), (11).

16 Ie the date on which overseers were abolished by the Rating and Valuation Act 1925 s 62 (as originally enacted), and their functions transferred to rating or other local authorities by s 1(2); and the Overseers Order 1927, SR & O 1927/55 (lapsed). See **LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq; **RATING AND COUNCIL TAX**.

17 See note 12.

18 See note 14.

19 Charities Act 1993 s 79(5).

20 Charities Act 1993 s 79(6).

21 Charities Act 1993 s 79(8). However, an appointment to fill a casual vacancy must be for the remainder of the term of the previous appointment: s 79(8)(b).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(2) TRUSTEES OF PAROCHIAL AND DIOCESAN CHARITIES/266. Dissolution of parishes: ecclesiastical charities.

266. Dissolution of parishes: ecclesiastical charities.

If a benefice is dissolved by a pastoral scheme¹, and any property of a charity established for ecclesiastical purposes of the Church of England is vested in or under the management or control of the incumbent of that benefice or a corporation of which he is a member, the trusts of the charity or the constitution of the corporation have effect with the substitution of the incumbent of the new benefice created by the union or, as the case may be, of a benefice, incorporating part of the area of the dissolved benefice, specified by order of the Charity Commission². Corresponding provision is made in the case of the churchwardens and parochial church council of a dissolved benefice³ and where a team ministry is established by a pastoral scheme for an area comprising the whole or a major part of the area of a benefice⁴. Changes in the vesting of property under these provisions take effect without any conveyance or other assurance⁵.

If a pastoral scheme unites one parish with another or alters the area of a parish, the purposes of a charity defined by reference to the area of one of the parishes are altered by the substitution of a reference to the united or altered parish, and the trusts of the charity have effect accordingly⁶.

If there is a condition of any benefaction as to attendance at or the performance of divine service or any other act at a church, and the church ceases to be used for divine service by virtue of a declaration of closure for regular public worship made by a pastoral church buildings scheme, the condition is to be taken as referring to the parish church of the parish in which the church originally specified or its site is situated⁷.

Where any property of a charity established for ecclesiastical purposes of the Church of England is vested in or under the management or control of the incumbent of a benefice and the benefice becomes vacant or the bishop declares a suspension period in respect of the benefice, then, during the period of the vacancy or suspension, at the case may be, the trusts of the charity have effect, without any conveyance or other assurance, with the substitution for the incumbent of that benefice of the priest in charge of that benefice⁸.

1 See under the Pastoral Measure 1983 (amended by the Dioceses, Pastoral and Mission Measure 2007): see **ECCLESIASTICAL LAW** vol 14 PARA 856 et seq.

2 Pastoral Measure 1983 s 40, Sch 3 para 11(1) (amended by the Charities Act 2006 Sch 8 para 72). As to the Charity Commission see PARAS 538-572. These provisions do not apply to any fund or property for which provision is made under the Charities Act 1993 s 63 (trusts for the repair etc of redundant buildings and contents) (see **ECCLESIASTICAL LAW**): Sch 3 para 11(10).

3 See the Pastoral Measure 1983 Sch 3 para 11(2) (amended by the Charities Act 2006 Sch 8 para 72). Unless otherwise dealt with by the Pastoral Measure 1983 Sch 3 para 11, property held by or on behalf of the parochial church council of a dissolved parish vests in or is held on behalf of the parochial church council of the parish in which the parish church of the dissolved parish is situated: see Sch 3 para 11(8).

4 See the Pastoral Measure 1983 Sch 3 para 11(3) (amended by the Team and Group Ministries Measure 1995 s 6(4)).

5 Pastoral Measure 1983 Sch 3 para 11(4), (8).

6 See the Pastoral Measure 1983 Sch 3 para 11(5).

7 Pastoral Measure 1983 Sch 3 para 11(9). See also s 63(4) (amended by the Charities Act 2006 Sch 8 para 70; and the Dioceses, Pastoral and Mission Measure 2007 s 40) where similar provisions apply in relation to giving sermons in church affected by a declaration of closure for regular public worship, with the proviso that the sermons may be given in such other church as the bishop may, with the Charity Commission's approval, direct.

8 Pastoral Measure 1983 s 74(1), (2).

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267. Alteration of diocesan boundaries: bishops as trustees.

Upon the application of the bishops concerned, or one of them, the Charity Commission¹ may make orders vesting charity property held upon trust by the bishop of one diocese in the bishop of another diocese, and substituting one bishop for another as trustee, in cases where the limits of dioceses have been altered².

1 As to the Charity Commission see PARAS 538-572.

2 See the Bishops Trusts Substitution Act 1858 ss 1, 2; and **ECCLESIASTICAL LAW** vol 14 PARA 801. The order may not deal with advowsons or similar rights which could be dealt with by a scheme of the Church Commissioners, nor may it deal with any ecclesiastical patronage or similar right without the consent of the Church Commissioners: see s 2 (amended by virtue of the Church Commissioners Measure 1947 ss 1, 2, 18(2)). The order may not affect trusts of a visitatorial or any other nature or character relating to the halls or colleges of Oxford or Cambridge Universities or to the colleges of Winchester, Eton or Westminster: see the Bishops Trusts Substitution Act 1858 s 4; and PARA 517. The Act does not extend to endowments of an eleemosynary or any other character governed by a specific Act of Parliament: s 5. Any costs necessarily incident to effecting the transfers are to be defrayed by order of the Charity Commission out of the property, real or personal, as it may direct, which are to be transferred: see s 3 (amended by the Charities Act 2006 Sch 8 paras 3-5). As to the Church Commissioners see **ECCLESIASTICAL LAW** vol 14 PARA 363 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(3) TRUSTEES OF LOCAL AUTHORITY CHARITIES/268. Transfer of local authority charities outside London.

(3) TRUSTEES OF LOCAL AUTHORITY CHARITIES

268. Transfer of local authority charities outside London.

In consequence of the reorganisation of local government outside Greater London effected by the Local Government Act 1972¹, property held on charitable trusts by existing local authorities was transferred to the new authorities established by that Act.

On 1 April 1974, where any property was held, as sole trustee, exclusively for charitable purposes² by an existing³ local authority⁴ for an area outside Greater London⁵, other than the parish council, parish meeting or representative body of an existing rural parish in England⁶, but including the corporation of a borough included in a rural district, that property vested⁷, on the same trusts⁸, in a new⁹ local authority¹⁰.

Where property was held by one of the existing authority in heads (1) to (4) below, and so held for the benefit of, or of the inhabitants of, or of any particular class or body of persons in, a specified area, the property vested in the new authority specified in heads (1) to (4) below, the area of which comprises the whole or the greater part of that specified area¹¹. Where the property was so held but was not held for such a benefit, it vested in the new authority specified in heads (1) to (4) below, the area of which comprises the whole or the greater part of the area of the existing authority, that is to say¹²:

- 93 (1) where the existing authority was a county¹³ council, the new authority is the council of the new county¹⁴;

- 94 (2) where the existing authority was the council of a borough or urban district in England, the new authority is the council of the parish constituted by reference to existing urban district and borough boundaries¹⁵ or, where there was no such parish, the council of the district¹⁶;
- 95 (3) where the existing authority was the council of a borough or urban district in Wales, the new authority is the council of the community or, where there is no such council, the council of the district¹⁷; and
- 96 (4) where the existing authority was a rural district council, then, if the rural district is co-extensive with a parish, the new authority is the parish council, and in any other case the new authority is the council of the district¹⁸.

Where the property was held by an existing county council or county borough council for the purposes of a registered educational charity¹⁹ then: (a) if the property was so held for the benefit of, or of the inhabitants of, or of any particular class or body of persons in, a specified area, the property vested in the new authority which is the local education authority for the whole or the greater part of that specified area²⁰; and (b) in any other case, the property vested in the new authority which is the local education authority for the whole or the greater part of the area of the existing county council or county borough council by which the property is held²¹.

Further, where the property was held by the corporation of a borough included in a rural district, it vested in the parish council for the parish consisting of the area of the existing borough²².

Where the property was held by the parish council, parish meeting or representative body of an existing rural parish in Wales, then: (i) in the case of property held by an existing parish council, the property vested in the community council for the community or group of communities, the area or areas of which are co-extensive with the area of the parish or parishes for which the existing parish council act²³; (ii) in the case of property held by the parish meeting or representative body of an existing parish the area of which is comprised in a community for which there is a community council, the property vested in that community council²⁴; and (iii) in any other case, the property vested in the council of the district which comprises the area of the existing rural parish²⁵.

Where, on 1 April 1974, any power with respect to a charity²⁶ (not being a charity incorporated under the Companies Acts or by charter²⁷) was under the trusts of the charity or by virtue of any enactment vested in, or in the holder of an office connected with, certain existing local authorities²⁸, that power vested in, or in the holder of the corresponding office connected with, or (if there is no such office) the proper officer²⁹ of, the corresponding³⁰ new authority³¹.

Nothing in these provisions affects any power of Her Majesty, the court³² or any other person to alter the trusts of any charity, nor do they apply in a case to which the provisions relating to Welsh Church funds apply³³.

1 See further **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

2 As to the meaning of 'charitable purposes' see PARA 1; definition applied by the Local Government Act 1972 s 210(11); Interpretation Act 1978 s 17(2)(a).

3 'Existing', in relation to a local government or other area or a local authority or other body means that area or body as it existed immediately before 26 October 1972 (the passing of the Local Government Act 1972): s 270(1).

4 'Local authority' means a county council, a district council, a London borough council or a parish council but, in relation to Wales, means a county council, county borough council or community: Local Government Act 1972 s 270(1) (definition amended by the Local Government Act 1985 s 102, Sch 16 para 8, Sch 17; and the Local Government (Wales) Act 1994 s 1(5)). For these purposes, 'local authority', in relation to a parish, includes a parish meeting and the representative body of a parish: Local Government Act 1972 s 210(11).

- 5 As to the transfer of powers on local government reorganisation in Greater London see PARAS 268-269.
- 6 'Wales' means the combined area of the preserved counties, and 'England' does not include any area which is included in any of the preserved counties: Local Government Act 1972 s 269 (substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 8).
- 7 Ie in accordance with the Local Government Act 1972 s 210(2)-(5): see the text and notes 11-25.
- 8 As to the meaning of 'trusts' see PARA 217 note 5; definition applied by the Local Government Act 1972 s 210(11); Interpretation Act 1978 s 17(2)(a).
- 9 'New', in relation to any area or authority, means an area or authority established by or under the Local Government Act 1972, including one established by virtue of any provision of the Local Government (Wales) Act 1994: Local Government Act 1972 s 270(1) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 57).
- 10 Local Government Act 1972 s 210(1). As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.
- 11 Local Government Act 1972 s 210(2).
- 12 Local Government Act 1972 s 210(2).
- 13 'County', without more, means, in relation to England, a metropolitan county or a non-metropolitan county, but in the expression 'county council' means, in relation to England, a non-metropolitan county only: Local Government Act 1972 s 270(1) (amended by the Local Government Act 1985 s 102, Sch 16 para 8).
- 14 Local Government Act 1972 s 210(2)(a).
- 15 Ie the council of the parish constituted under the Local Government Act 1972 s 1, Sch 1 Pt V: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 27 et seq.
- 16 Local Government Act 1972 s 210(2)(b). 'District', without more, means, in relation to England, a metropolitan district or a non-metropolitan district: s 270(1).
- 17 Local Government Act 1972 s 210(2)(c).
- 18 Local Government Act 1972 s 210(2)(d).
- 19 Ie established under the Charities Act 1960 s 4 (repealed: now re-enacted in the Charities Act 1993 s 3 (see PARA 304 et seq)) in any part of that register maintained by the Secretary of State by virtue of the Charities Act 1960 s 2 (repealed) (educational charities): Local Government Act 1972 s 210(3). As to the meaning of 'charity' see PARA 1; definition applied by the Local Government Act 1972 s 210(11); Interpretation Act 1978 s 17(2)(a).
- 20 Local Government Act 1972 s 210(3)(a).
- 21 Local Government Act 1972 s 210(3)(b).
- 22 Local Government Act 1972 s 210(4).
- 23 Local Government Act 1972 s 210(5)(a). As to property held by a Welsh borough or urban district council see the text to note 16.
- 24 Local Government Act 1972 s 210(5)(b).
- 25 Local Government Act 1972 s 210(5)(c).
- 26 References in the Local Government Act 1972 s 210(6) to a power with respect to a charity do not include references to a power of any person by virtue of being a charity trustee of it; but where under the trusts of any charity, not being a charity incorporated under the Companies Acts or by charter, the charity trustees on 1 April 1974 included either an existing local authority to which s 210(1) (see the text and notes 1-10) applies or the holder of an office connected with such an existing local authority, those trustees instead included the corresponding new authority as defined in s 210(6) or, as the case may require, the holder of the corresponding office connected with, or (if there is no such office) the proper officer of, that authority: s 210(7). As to the meaning of 'charity trustees' see PARA 1 note 10; definition applied by s 210(11); Interpretation Act 1978 s 17(2)(a).

- 27 As to modes of creation of charitable corporations see PARA 230.
- 28 In existing authorities to which the Local Government Act 1972 s 210(1) applies: see the text and notes 1-10.
- 29 Any reference in the Local Government Act 1972 to a proper officer is, in relation to any purpose and any local authority or other body or any area, to be construed as a reference to an officer appointed for that purpose by that body or for that area, as the case may be: s 270(3).
- 30 In the new authority in which, had the property of the charity been vested in the existing local authority, that property would have been vested under the Local Government Act 1972 s 210(2)-(5) (see the text and notes 11-25): see s 210(6).
- 31 Local Government Act 1972 s 210(6).
- 32 As to the meaning of 'court' see PARA 175 note 12; definition applied by the Local Government Act 1972 s 210(11); Interpretation Act 1978 s 17(2)(a).
- 33 Local Government Act 1972 s 210(10). The reference in the text to the provisions relating to Welsh Church funds is a reference to s 211 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 579): see s 210(10).

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269. Transfer of local authority charities in London.

In consequence of the reorganisation of local government administration in and around London under the London Government Act 1963, it became necessary to transfer property held on charitable trusts by the London and Middlesex County Councils and the councils of metropolitan and county boroughs within Greater London, and to transfer powers in respect of a charity vested in those councils or certain others or in the holders of offices connected with such a council. Such property and powers were accordingly vested in either the Greater London Council or the Inner London Education Authority, or in one of the London borough councils, or in the holder of the appropriate office connected with the appropriate council¹. Apart from those provisions, the Secretary of State for the Environment² had power by order to make such incidental, consequential, transitional or supplementary provision as appeared necessary or proper³.

Under further reorganisation by the Local Government Act 1985 the Greater London Council was abolished⁴ and a new Inner London Education Authority was established⁵. It was provided that where, immediately before the abolition date, any property was held exclusively for charitable purposes by the Greater London Council, and the Inner London Education Authority was the charity trustee of the charity to which the property related, that property should on that date vest in the new Inner London Education Authority⁶. Subject to this it was further provided that the Home Secretary could by order make such provision in relation to any charity as appeared to him necessary or expedient in consequence of the abolition of the Greater London Council⁷.

Subsequently the new Inner London Education Authority was abolished by the Education Reform Act 1988⁸. Where, immediately before the abolition date, any property was held exclusively for charitable purposes by the Inner London Education Authority as sole trustee and the charity was primarily for the benefit of the area of a single inner London council⁹, that property became vested on that date for the like purposes in that council¹⁰. In other areas where property was held exclusively for charitable purposes by the Inner London Education

Authority as sole trustee, that property became vested on that date for the like purposes in the London Residuary Body¹¹ or in such other person appointed before that date¹².

1 For details of the provisions transferring property and powers in respect of charities see the London Government Act 1963 s 81(1) (repealed) (property held by the London or Middlesex County Council), s 81(2) (repealed) (property held by borough councils), s 81(3) (repealed) (powers with respect to a charity vested in such a council or in the holder of an office connected with it), s 81(4) (repealed) (powers with respect to a charity established wholly or mainly for the benefit of an area within Greater London, vested in various county councils), s 81(6) (repealed) (powers with respect to other charities). See also s 81(7) (repealed) (charity trustees, including the holder of an office connected with a borough council within the Greater London area), and s 81(5) (repealed) (power for the Inner London Education Authority to nominate an inner London borough council, or the holder of an office connected with it, in whom powers with respect to a charity were to vest).

2 See the Secretary of State for the Environment Order 1970, SI 1970/1681 (lapsed).

3 See the London Government Act 1963 s 84(1); and **LONDON GOVERNMENT**. For an example of the exercise of this power and its interaction with transitional provisions of s 81 (repealed) see *Re Alexandra Park and Palace Acts, Alexandra Park Trustees v Haringey London Borough Council* (1967) 66 LGR 306.

4 See the Local Government Act 1985 s 1(1). The abolition date was 1 April 1986: s 1(2).

5 ie as from the abolition date (see note 4): Local Government Act 1985 s 18 (repealed).

6 Local Government Act 1985 s 90(1) (repealed).

7 See the Local Government Act 1985 s 90(2) (amended by the Education Reform Act 1988 Sch 13 Pt 1). Nothing in the Local Government Act 1985 s 90 affects any power of Her Majesty, the court or any other person to alter the trusts of any charity: s 90(3).

8 Education Reform Act 1988 s 162(1) (repealed). The abolition date was 1 April 1990: s 162(1), (2).

9 For these purposes, a charity is a charity primarily for the benefit of the area of a single inner London council if the charity is established for purposes which are by their nature or by the trusts of the charity directed wholly or mainly to the benefit of an area which falls wholly or mainly within that council's area: Education Reform Act 1988 s 192(9). 'Inner London council' means the council of an inner London borough or (in its capacity as a local authority) the Common Council of the City of London: s 163(2). As to the meaning of 'charity' see PARA 1; and as to the meaning of 'trusts' see PARA 217 note 5; definitions applied by s 192(11) (amended by the Charities Act 1993 s 98(1), Sch 6 para 30).

10 Education Reform Act 1988 s 192(1). See further **EDUCATION** vol 15(1) (2006 Reissue) PARA 20. Powers vested in officers of the Inner London Education Authority vested in the corresponding inner London council officer, if any, and otherwise in an officer appointed, with his consent and that of the council, by the Charity Commissioners (now the Charity Commission): see s 192(2), (3). The appointment was to be made within two years of the abolition date, and in the meantime the London Residuary Body was to be treated as having been appointed: see s 192(7).

11 As to the London Residuary Body see **EDUCATION** vol 15(2) (2006 Reissue) PARA 749.

12 See the Education Reform Act 1988 s 192(4). Powers with respect to such charities vested in, or in the holder of any office connected with, the Inner London Education Authority, became vested in the London Residuary Body or in such other person as the Charity Commissioners might appoint: see s 192(5). The appointment was to be made within two years of the abolition date, and in the meantime the London Residuary Body was to be treated as having been appointed: see s 192(7). References in s 192(1)-(5) to a power with respect to a charity do not include references to any power of any person by virtue of being a charity trustee of that charity: see s 192(6). There is provision for the replacement of charity trustees where they included the Inner London Education Authority or the holder of an office connected with the Inner London Education Authority: see s 192(6). As to the meaning of 'charity trustees' see PARA 1 note 10; definition applied by s 192(11) (amended by the Charities Act 1993 s 98(1), Sch 6 para 30).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(i) Initial Appointment/270. Donor's failure to appoint trustee.

(4) APPOINTMENT OF TRUSTEES

(i) Initial Appointment

270. Donor's failure to appoint trustee.

The appointment of the first trustees of a charity rests with the donor, but a charitable gift is not defeated by his failure to provide machinery for carrying his charitable purpose into effect¹. Where money is given to charity generally and indefinitely without trustees or objects selected, the Crown, as *parens patriae*, is the constitutional trustee, and disposes of the fund under the sign manual². Where there is a devise for such charity as the testator has by writing appointed, and no writing is to be found, the Crown will appoint³. Where the donor intends to create a trust, but appoints no trustee, the court disposes of the fund by means of a scheme⁴.

1 As to the failure of or disclaimer by trustee see PARA 162.

2 *Moggridge v Thackwell* (1803) 7 Ves 36 at 83, 86 per Lord Eldon LC; *Cary v Abbot* (1802) 7 Ves 490; *Morice v Bishop of Durham* (1805) 10 Ves 522 at 541 per Lord Eldon LC; *Ommanney v Butcher* (1823) Turn & R 260 at 271 per Plumer MR. As to the Crown's jurisdiction over charities see PARAS 508-509.

3 *A-G v Syderfen* (1683) 1 Vern 224.

4 *Mills v Farmer* (1815) 1 Mer 55 at 94-95 per Lord Eldon LC; *Reeve v A-G* (1843) 3 Hare 191 at 196-197 per Shadwell V-C. As to general principles for the direction of schemes see PARA 178.

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271. Who is the initial trustee.

In general, no problem arises in determining who has been appointed trustee and who should act, and if any question does arise it is determined by a process of construction¹. However, where the gift is to a local branch of a large charitable institution, the byelaws of the institution may require the gift to be transferred to the main institution, although its application may be restricted to the area of the branch². Such byelaws do not extend to gifts which the local branch is to hold on special trusts, not for the general purposes of the institution³.

1 See eg *Re Lavers* (1908) Times, 7 November, where property was to be vested in trustees 'commonly called the X Trustees (the same who have the right of presentation of the vicarage of Y)'. The right of presentation was not vested in the X Trustees, and it was held that the testator intended to appoint those in whom it was vested.

2 *Royal National Lifeboat Institution v Turver* (1915) 31 TLR 340.

3 *Royal National Lifeboat Institution v Turver* (1915) 31 TLR 340.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(ii) Who may or should be appointed New Trustees/272. General principles.

(ii) Who may or should be appointed New Trustees

272. General principles.

Vacancies among trustees should be filled by persons who are likely best to discharge the duties imposed upon them by the trust¹.

The fact that three new trustees are appointed, of whom two hold opposite views on an important matter affecting the charity, is not sufficient reason for upsetting an appointment²; but a suspicion that former trustees have used their powers for political ends is sufficient to prevent their re-appointment³. There is no objection to trustees being related to one another⁴.

1 *Baker v Lee* (1860) 8 HL Cas 495 at 513 per Lord Cranworth.

2 *Re Burnham National Schools* (1873) LR 17 Eq 241 at 250 per Jessel MR.

3 *Re Norwich Charities* (1837) 2 My & Cr 275.

4 *Re Lancaster Charities, Re Charitable Trusts Act 1853* (1860) 3 LT 582. However, the Charity Commission sometimes takes objection in cases of charities in small parishes, with small bodies of trustees, to a preponderance of members of one family if the trustees co-opt one another. As to the Charity Commission see PARAS 538-572.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(ii) Who may or should be appointed New Trustees/273. Disqualification for acting as charity trustee.

273. Disqualification for acting as charity trustee.

A person is disqualified for being a charity trustee¹ or trustee for a charity² if:

- 97 (1) he has been convicted of any offence involving dishonesty or deception³;
- 98 (2) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged or he is the subject of a bankruptcy restrictions order or an interim order⁴, unless leave has been granted under the Company Directors Disqualification Act 1986⁵ for him to act as director of the charity⁶;
- 99 (3) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it⁷;
- 100 (4) he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission⁸ or, before the transfer of their functions to Commission, the Charity Commissioners⁹, or by the High Court, on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated¹⁰;
- 101 (5) he has been removed under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990¹¹ or the Charities and Trustee Investment (Scotland) Act 2005¹² from being concerned in the management or control of any body¹³;
- 102 (6) he is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989¹⁴ or to an order made under the Insolvency Act 1986¹⁵ on failure to pay under a county court administration order¹⁶.

On the application of a disqualified person, with certain exceptions¹⁷, the Commission may waive his disqualification either generally or in relation to a particular charity or a particular

class of charities¹⁸. Any such waiver must be notified in writing to the person concerned¹⁹. If a person disqualified under ground (4) or (5) makes such an application five years or more after the date on which his disqualification took effect then, subject to the same exceptions²⁰, the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused²¹.

An appeal against such a decision of the Commission to waive or not to waive a person's disqualification lies to the Tribunal²² at the instance of the Attorney General, the person who applied for the waiver or any other person who is or may be affected by the decision²³. The Tribunal has the power to do any of the following: (a) quash the decision and, if appropriate, remit the matter to the Commission; (b) substitute for the decision any other decision of a kind which could have been made by the Commission²⁴.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 As to the meaning of 'charity' see PARA 1.

3 Charities Act 1993 s 72(1)(a). This applies whether the conviction occurred before or after 1 August 1993 (the commencement of s 72(1)), but does not apply to any conviction which is a spent conviction under the Rehabilitation of Offenders Act 1974: Charities Act 1993 s 72(2)(a). As to spent convictions and the Rehabilitation of Offenders Act 1974 see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq.

4 Charities Act 1993 s 72(1)(b) (amended by SI 2006/1722). This applies whether the adjudication of bankruptcy or the sequestration occurred before or after 1 August 1993 (the commencement of the Charities Act 1993 s 72(1)): s 72(2)(b) (amended by SI 2006/1722). See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

5 Ie under the Company Directors Disqualification Act 1986 s 11: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 703 et seq.

6 See the Charities Act 1993 s 72(3) (amended by the Insolvency Act 2000 s 8, Sch 4(11) para 18(b)).

7 Charities Act 1993 s 72(1)(c). This applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of s 72(1): s 72(2)(c). See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

8 As to the Charity Commission see PARAS 538-572.

9 Ie under the Charities Act 1993 s 18(2)(i) (see PARA 561); or under the Charities Act 1960 s 20(1A)(i) (repealed); or under the Charities Act 1960 s 20(1)(i) (repealed) before 1 November 1992 (ie the commencement of the Charities Act 1992 s 8): see the Charities Act 1993 s 72(1)(d) (amended by the Charities Act 2006 Sch 8 para 156(1), (2)). The Charities Act 1993 s 18 replaces the Charities Act 1960 s 20. The 'Charity Commissioners' means the Charity Commissioners for England and Wales: Charities Act 1993 s 72(8) (added by the Charities Act 2006 Sch 8 para 156(1), (5)). As to the Charity Commissioners see PARA 538.

10 Charities Act 1993 s 72(1)(d) (as amended: see note 9). This applies in relation to orders made and removals effected before or after 1 August 1993 (the commencement of s 72(1)): s 72(2)(d) (as so amended). The Commission must keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in s 72(1)(d) either by an order of the Commission made before or after the commencement of s 72(1) or by an order of the High Court made after 1 January 1993 (the commencement of the Charities Act 1992 s 45(1)): Charities Act 1993 s 72(6) (amended by the Charities Act 2006 Sch 8 para 156(4)). Where any person is removed by the High Court, the court must notify the Commission of his removal: Charities Act 1993 s 72(6) (as so amended). Entries in the register must be available for public inspection in legible form at all reasonable times: s 72(7).

11 Ie the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7 (repealed) (powers of Court of Session to deal with management of charities).

12 Ie the Charities and Trustee Investment (Scotland) Act 2005 s 34(5)(e) (powers of the Court of Session).

13 Charities Act 1993 s 72(1)(e) (amended by SI 2006/242). This applies in relation to orders made and removals effected before or after 1 August 1993 (the commencement of the Charities Act 1993 s 72(1)): s 72(2)(d).

14 Ie the Companies (Northern Ireland) Order 1989, SI 1989/2404, Pt II.

15 He under the Insolvency Act 1986 s 429(2)(b) (failure to pay under county court administration order): see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 910). As from a day to be appointed the Charities Act 1993 s 72(1)(f) is amended by the Tribunals, Courts and Enforcement Act 2007 Sch 16 para 7 and will apply instead to the Insolvency Act 1986 s 429(2) (disabilities on revocation of county court administration order). At the date at which this volume states the law no such day had been appointed.

16 Charities Act 1993 s 72(1)(f) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt II para 18(a)). This applies in relation to orders made and removals effected before or after 1 August 1993 (the commencement of the Charities Act 1993 s 72(1)): s 72(2)(d). A person is not, however, disqualified under s 72(1)(f) if:

- 7 (1) in the case of a person subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, leave for the purposes of s 1(1)(a) or s 1A(1)(a) (see **COMPANIES** vol 15 (2009) PARA 1575 et seq) has been granted for him to act as director of the charity (Charities Act 1993 s 72(3)(a) (substituted by the Insolvency Act 2000 s 8, Sch 4 Pt II para 18(b)));
- 8 (2) in the case of a person subject to a disqualification order under the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150, leave has been granted by the High Court in Northern Ireland for him to act as director of the charity (Charities Act 1993 s 72(3)(aa) (added by the Insolvency Act 2000 s 8, Sch 4 Pt II para 18(b); amended by SI 2009/1941)); or
- 9 (3) in the case of a person subject to an order under the Insolvency Act 1986 s 429(2)(b) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 910), leave has been granted by the court which made the order for him so to act (Charities Act 1993 s 72(3)(b)).

17 No waiver can be granted in relation to any charity which is a company if the person concerned is for the time being prohibited by virtue of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, or of s 11(1), 12(2), 12A or 12B of that Act (**COMPANIES** vol 15 (2009) PARAS 1590-1591), from acting as director of the charity, and leave has not been granted for him to act as director of any other company: Charities Act 1993 s 72(4)(a), (b) (s 72(4)(a) amended by the Insolvency Act 2000 s 8, Sch 4 Pt II para 18(c); and SI 2004/1941). As to the meaning of 'company' see PARA 227.

18 Charities Act 1993 s 72(4) (amended by the Charities Act 2006 Sch 8 paras (1), (3)).

19 Charities Act 1993 s 72(5).

20 He those detailed in the Charities Act 1993 s 72(4)(a), (b) (see note 15).

21 Charities Act 1993 s 72(4A) (added by the Charities Act 2006 s 35). This provision applies whether the disqualification took effect before, on or after 27 February 2007: Charities Act 2006 Sch 10 para 11.

22 As to the Tribunal see PARA 573 et seq.

23 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

24 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(ii) Who may or should be appointed New Trustees/274. Person acting as a charity trustee while disqualified.

274. Person acting as a charity trustee while disqualified.

Any person who acts as a charity trustee¹ or trustee for a charity² while he is disqualified for being such a trustee by virtue of the relevant provisions of the Charities Act 1993³ is guilty of an offence⁴, except where the charity concerned is a company⁵ and the disqualified person is disqualified by virtue only of certain specified matters⁶ relating to insolvency⁷. However, no proceedings may be instituted except by or with the consent of the Director of Public Prosecutions⁸. Acts done as charity trustee or trustee for a charity by a person disqualified by

virtue of the relevant provisions of the Charities Act 1993⁹ are not invalid by reason only of that disqualification¹⁰.

Where the Charity Commission¹¹ is satisfied that any person has acted as charity trustee or trustee for a charity (excluding, until a day to be appointed, an exempt charity¹²) while disqualified for being such a trustee¹³, and that, while so acting he has received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with his acting as charity trustee or trustee for the charity, it may by order direct him to repay to the charity the whole or part of any such sums, or (as the case may be) to pay to the charity the whole or part of the monetary value, as determined by it, of any such benefit¹⁴. This does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified for being a charity trustee or trustee for the charity¹⁵.

An appeal against such an order of the Commission lies to the Tribunal¹⁶ at the instance of the Attorney General, the person subject to the order or any other person who is or may be affected by the order¹⁷. The Tribunal has the power to do any of the following: (1) quash the order and, if appropriate, remit the matter to the Commission; (2) substitute for the order any other order which could have been made by the Commission¹⁸.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 As to the meaning of 'charity' see PARA 1.

3 Ie under the Charities Act 1993 s 72: see PARA 273.

4 Charities Act 1993 s 73(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both; and on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both: s 73(1). As to the statutory maximum see PARA 237 note 7.

5 As to the meaning of 'company' see PARA 227.

6 Ie where he is disqualified by virtue only of the Charities Act 1993 s 72(1)(b) or (f): see PARA 273 heads (2), (6).

7 Charities Act 1993 s 73(2).

8 Charities Act 1993 s 94(1), (2)(e). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

9 See note 3.

10 Charities Act 1993 s 73(3).

11 As to the Charity Commission see PARAS 538-572.

12 As to exempt charities see PARA 315. As from a day to be appointed the Charities Act 1993 s 73(4)(a) is amended by the Charities Act 1993 Sch 5 para 9, Sch 9, para 5 and will no longer exclude an exempt charity. At the date at which this volume states the law no such day had been appointed.

13 See note 3.

14 Charities Act 1993 s 73(4) (amended by the Charities Act 2006 Sch 8 para 157). A person guilty of disobedience to any order made by the Commission under the Charities Act 1993 s 73 may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court: s 88 (amended by the Charities Act 2006 Sch 8 para 167); and see PARA 551.

15 Charities Act 1993 s 73(5).

16 As to the Tribunal see PARA 573 et seq.

17 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

18 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(ii) Who may or should be appointed New Trustees/275. Qualification under trust instrument necessary.

275. Qualification under trust instrument necessary.

In selecting trustees, regard must be had to any directions contained in the scheme¹ or other instrument² regulating the charity. Thus, where trustees are required to be residents in a certain locality, persons not possessing the necessary qualification should not be appointed³, although in special circumstances the residential area may be extended⁴. In the absence of express direction in the instrument regulating the charity, new trustees who reside at a distance from the charitable institution may be appointed⁵, but as a rule it is expedient to appoint trustees from the neighbourhood⁶.

1 *Foord v Baker* (1859) 27 Beav 193, where the scheme provided that no person who had a beneficial interest in the charity estate should act as a trustee. As to schemes see PARA 177 et seq.

2 *A-G v Earl of Stamford* (1843) 1 Ph 737 at 748, 755 per Lord Cottenham LC, where a residential qualification was required by the trust deed. See also *A-G v Pearson* (1817) 3 Mer 353 at 403 per Lord Eldon LC, where, however, the trust deed was silent on this point.

3 *A-G v Cowper* (1785) 1 Bro CC 439; *A-G v France* (1780) cited in *A-G v Cowper* (1785) 1 Bro CC 439; *A-G v Earl of Stamford* (1843) 1 Ph 737. See also *A-G v Earl of Devon* (1846) 16 LJCh 34 at 45 per Shadwell V-C, where the trustees were to be 'near inhabiting'. In *A-G v Earl of Stamford* (1849) 16 Sim 453, the requirement that trustees be supplied from within a parish was held to be satisfied by persons whose daily work was within the parish, but who resided a short distance outside.

4 *Re Sekforde's Charity* (1861) 4 LT 321 (radius of six miles from charitable institution).

5 *Re Lancaster Charities, Re Charitable Trusts Act 1853* (1860) 7 Jur NS 96: 'it is not always desirable to entrust the management of charities to a purely local interest'.

6 *A-G v Moises* (1879) reported in Tudor on Charities (4th Edn, 1906) pp 1036, 1038.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(ii) Who may or should be appointed New Trustees/276. Religious opinions of trustees.

276. Religious opinions of trustees.

Where a charity is established exclusively for the benefit of members of the Church of England or for the instruction of children on Church of England lines, then, independently of any express provision¹ in the instrument regulating the charity, only members of that church should be appointed trustees². The same principle applies in the case of charities for the exclusive benefit of dissenting sects³.

Where a charity is established for purposes connected with a parish church, it is proper, though of course not necessary, to appoint the parson and the churchwardens as trustees⁴.

It is the practice of the Charity Commission to insert in any scheme relating to a parochial ecclesiastical charity a provision giving the parochial church council of the parish some direct representation on the governing body of the charity⁵.

Where a charity is substantially eleemosynary in character, the religious opinions of proposed trustees or governors must not be taken into consideration⁶.

1 For an example of express provision see *Re Church Patronage Trust, Laurie v A-G* [1904] 2 Ch 643, CA.

2 *Re Norwich Charities* (1837) 2 My & Cr 275 at 305 per Lord Cottenham LC; *Re Scarborough Corp'n* (1837) 1 Jur 36; *Re Stafford Charities* (1857) 25 Beav 28; *Baker v Lee* (1860) 8 HL Cas 495 at 513 per Lord Cranworth; *A-G v Clifton* (1863) 32 Beav 596; *Re Burnham National Schools* (1873) LR 17 Eq 241 at 247; *A-G v Bishop of Limerick* (1870) 18 WR 1192; and see *Re Hodgson's School* (1878) 3 App Cas 857 at 866, PC.

3 *A-G v Pearson* (1817) 3 Mer 353; *Shore v Wilson* (1842) 9 Cl & Fin 355 at 389, HL, per Alderson B; *Re Drogheda Charitable and Trust Estates* (1846) 2 Jo & Lat 422; *A-G v Calvert* (1857) 23 Beav 248; *Baker v Lee* (1860) 8 HL Cas 495; *A-G v St John's Hospital, Bath* (1876) 2 ChD 554 at 565-566 per Malins V-C.

4 *Re Donington Church Estate, Re Charitable Trusts Act 1853* (1860) 2 LT 10 (in this case the court declined to appoint the overseers of the poor and the surveyor of highways as trustees, apparently on the ground that they would probably be dissenters, and because the rector and churchwardens objected to their appointment). In one case in Ireland the Ecclesiastical Commissioners for Ireland were made trustees: see *Re Bishop Gore's Charity* (1844) Drury temp Sug 536.

5 As to non-ecclesiastical charities see also the Charities Act 1993 s 79(2); and PARA 264. As to the Charity Commission see PARAS 538-572.

6 *Re Norwich Charities* (1837) 2 My & Cr 275; *A-G v Calvert* (1857) 23 Beav 248; *Baker v Lee* (1860) 8 HL Cas 495 at 513 per Lord Cranworth; *A-G v Tottenham* (1870) IR 5 Eq 241; *A-G v St John's Hospital, Bath* (1876) 2 ChD 554.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(ii) Who may or should be appointed New Trustees/277. No restriction on number.

277. No restriction on number.

The statutory limitation on the number of trustees of settlements of land does not apply in the case of land vested in trustees for charitable, ecclesiastical or public purposes, or where the net proceeds of the sale of the land are held for those purposes¹.

1 See the Trustee Act 1925 s 34(3); and **TRUSTS** vol 48 (2007 Reissue) PARAS 804, 822.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(iii) Appointment under Express Powers/278. Strict and directory powers.

(iii) Appointment under Express Powers

278. Strict and directory powers.

Express powers for the appointment of new trustees contained in the instrument or scheme founding or regulating a charity may be construed by the court as being in character either

strict powers or directory powers. Strict powers can only be exercised in accordance with the exact circumstances prescribed by the settlement¹; but non-fulfillment of the prescribed conditions does not prevent the execution of a directory power². The same principle of construction applies also to directions contained in decrees of the court³ and Acts of Parliament⁴. Appointments under express powers are now rare, since in almost all cases a statutory power is available⁵.

1 For a case where a power was apparently construed as strict see *Foley v Wontner* (1820) 2 Jac & W 245.

2 *A-G v Floyer* (1716) 2 Vern 748 (where there was a direction in a will that, when six trustees were reduced to three, others should be appointed, and the sole surviving trustee was allowed to appoint others); and see **TRUSTS** vol 48 (2007 Reissue) PARA 818 et seq. See also *A-G v Bishop of Litchfield* (1801) 5 Ves 825; *A-G v Cuming* (1843) 2 Y & C Ch Cas 139; *Doe d Dupleix v Roe* (1794) 1 Anst 86 at 91 per Eyre CB (new trustees validly appointed before number reduced to figure named in trust deed); *A-G v Cowper* (1785) 1 Bro CC 439 (residential qualification construed as directory).

3 *A-G v Scott* (1750) 1 Ves Sen 413 at 415 per Lord Hardwicke LC.

4 *Doe d Read v Godwin* (1822) 1 Dow & Ry KB 259.

5 As to the statutory power of appointment see PARA 282. As to powers generally see **POWERS**.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(iii) Appointment under Express Powers/279. Court's powers.

279. Court's powers.

The court may sanction the appointment of an association registered under the Companies Acts as sole trustee in place of retiring trustees, notwithstanding that the trust deed does not authorise the appointment of a sole trustee¹.

Where the court is administering a charitable trust, trustees ought not to exercise any power they may have of appointing new trustees without the sanction of the court². However, if proper persons are selected, the appointment is valid³.

Where the trust instrument is lost, but there have been many appointments in the past, the court presumes that the earliest usage was in accordance with the terms of the lost instrument⁴. Where the instrument is not explicit the court may direct an inquiry as to who are entitled to appoint new trustees⁵.

1 *Re Barnardo* (1907) Times, 14 June.

2 *A-G v Clack* (1839) 1 Beav 467.

3 *A-G v Lawson* (1866) 36 LJCh 130 at 135 per Kindersley V-C.

4 *A-G v Dalton* (1851) 20 LJCh 569 at 573-574 per Romilly MR. As to usage see *A-G v Pearson* (1817) 3 Mer 353 at 403 per Lord Eldon LC; *A-G v St Cross Hospital* (1853) 17 Beav 435.

5 *Davis v Jenkins* (1814) 3 Ves & B 151 at 155, 159 per Lord Eldon LC.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(iii) Appointment under Express Powers/280. Vesting of property in new trustees.

280. Vesting of property in new trustees.

Where, under the trusts of a charity¹, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees² or other persons, a memorandum declaring a trustee to have been so appointed or discharged, is sufficient evidence of the fact if the memorandum is signed by the person presiding at the meeting or in some other manner directed by the meeting, and attested by two persons present at the meeting³. Such a memorandum, if executed as a deed, has the same effect as the statutory provisions which relate to vesting declarations as respects trust property in deeds appointing or discharging trustees⁴, as if the appointment or discharge were effected by the deed⁵.

The court has power under the Trustee Act 1925 to vest any interest in land, stock or thing in action in any trustee of a charity over which the court would have jurisdiction upon action duly instituted, whether the trustee was appointed under an express power or by the court⁶.

1 As to the meaning of 'trusts' in this context see PARA 217 note 5.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 Charities Act 1993 s 83(1). This provision applies to a memorandum made at any time: s 83(4). Section 83 applies in relation to any institution to which the Literary and Scientific Institutions Act 1854 applies (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 939) as it applies in relation to a charity: Charities Act 1993 s 83(5).

4 I.e. the Trustee Act 1925 s 40: see **TRUSTS** vol 48 (2007 Reissue) PARA 866.

5 Charities Act 1993 s 83(2). This only applies to memoranda made after 1 January 1961 (i.e. the commencement of the Charities Act 1960): Charities Act 1993 s 83(4). The similar provisions of the Trustee Appointment Act 1850, the Trustee Appointment Act 1869, the Trustees Appointment Act 1890 (and, so far as it applied those Acts, the School Sites Act 1852) were repealed by the Charities Act 1960, but where at 1 January 1961 (the commencement of the Charities Act 1960) the provisions of those Acts as to the appointment of trustees applied in relation to any land, they continue to have effect as if they were declared as part of the trusts on which the land is held: s 35(6).

6 See the Trustee Act 1925 s 52; and **TRUSTS** vol 48 (2007 Reissue) PARA 870. As to the procedure for applying for a vesting order see **TRUSTS** vol 48 (2007 Reissue) PARA 871.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(iii) Appointment under Express Powers/281. Evidence of vesting.

281. Evidence of vesting.

A duly signed and attested¹ memorandum declaring a trustee to be appointed or discharged by resolution of a meeting of charity trustees, is sufficient evidence of the fact of the appointment or discharge². On proof of the signature, whether by evidence or presumption, the document is presumed to have been duly signed and attested unless the contrary is shown³.

1 For the requirements as to signature and attestation, and the cases in which these provisions are applicable to appointments and discharges see PARA 280.

2 Charities Act 1993 s 83(1). This applies to a memorandum made at any time: s 83(4). Section 83 applies in relation to any institution to which the Literary and Scientific Institutions Act 1854 applies (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 939) as it applies in relation to a charity: Charities Act 1993 s 83(5). As to the meaning of 'charity trustees' see PARA 1 note 10.

3 Charities Act 1993 s 83(3). This provision applies to a memorandum made at any time: s 83(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(iv) Appointment under Statutory Powers/282. Appointment of trustees under the Trustee Act 1925.

(iv) Appointment under Statutory Powers

282. Appointment of trustees under the Trustee Act 1925.

The general provisions of the Trustee Act 1925 as to the appointment of new trustees¹ and the vesting of trust property in new or continuing trustees² apply to charitable trusts as much as to any others³.

1 See the Trustee Act 1925 s 36; and **TRUSTS** vol 48 (2007 Reissue) PARA 835 et seq. As to the appointment of new trustees generally see **TRUSTS** vol 48 (2007 Reissue) PARA 818 et seq.

2 Trustee Act 1925 s 40: see **TRUSTS** vol 48 (2007 Reissue) PARAS 866-867.

3 Cf *Re Coates to Parsons* (1886) 34 ChD 370.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(iv) Appointment under Statutory Powers/283. Trustees of religious or educational societies and church trusts.

283. Trustees of religious or educational societies and church trusts.

Various statutes¹ gave powers of appointment of new trustees to congregations, societies and bodies in relation to trusts of land for various religious or educational purposes. These provisions have been repealed², but their operation is preserved in the cases where they applied in relation to any land at the commencement of the Charities Act 1960³.

1 See the Trustee Appointment Act 1850, the Trustee Appointment Act 1869, the Trustees Appointment Act 1890, and, so far as it applied to any of those Acts, the School Sites Act 1852.

2 Ie by the Charities Act 1960 48(2), Sch 7 Pt I.

3 See the Charities Act 2006 Sch 10 para 21; and PARA 280. The Charities Act 1960 (repealed) commenced on 1 January 1961.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(iv) Appointment under Statutory Powers/284. Parochial charities: reorganisation of parishes, etc.

284. Parochial charities: reorganisation of parishes, etc.

Special statutory provision is made in relation to the appointment of trustees of non-ecclesiastical parochial charities¹, and to cope with the consequences of changes of local secular² and ecclesiastical³ organisation⁴.

- 1 See the Charities Act 1993 s 79(2); and PARA 264.
- 2 See the Charities Act 1993 s 79; and PARA 264.
- 3 See in particular the Pastoral Measure 1983 Sch 3 para 11; and PARA 266. See also the City of London (Guild Churches) Act 1952 s 28; and **ECCLESIASTICAL LAW** vol 14 PARA 597 et seq.
- 4 See generally PARAS 266-267.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(v) Appointment by the Court/285. Court's general jurisdiction.

(v) Appointment by the Court

285. Court's general jurisdiction.

Apart from any statutory jurisdiction, the High Court has an inherent jurisdiction to appoint new trustees of charities¹, even where there is in existence a power of appointment capable of being executed², and under this jurisdiction can appoint additional trustees³.

The court has no power to appoint judicial trustees for any charity⁴.

- 1 *A-G v London Corp'n* (1790) 3 Bro CC 171; *A-G v Stephens* (1834) 3 My & K 347.
- 2 *A-G v Clack* (1839) 1 Beav 467. It is not proper to apply to the court in ordinary cases where a power of appointment is capable of being exercised: *Re Gibbon's Trusts* (1882) 45 LT 756; *Re Higginbottom* [1892] 3 Ch 132.
- 3 *Re Burnham National Schools* (1873) LR 17 Eq 241 at 246; *Re Browne's Hospital v Stamford* (1889) 60 LT 288.
- 4 See the Judicial Trustees Act 1896 s 6(2); and **TRUSTS** vol 48 (2007 Reissue) PARA 760.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(v) Appointment by the Court/286. Jurisdiction under the Trustee Act 1925.

286. Jurisdiction under the Trustee Act 1925.

Whenever it is expedient to appoint a new trustee or new trustees of any trust, whether charitable or otherwise, and it is found inexpedient, difficult or impracticable to do so without the court's assistance, the court may make an order for the appointment of a new trustee either in substitution for or in addition to any existing trustee or trustees, although there is no existing trustee¹, and for vesting the property in the new trustee or trustees without any conveyance².

Thus, the court may appoint new trustees of charities where the old trustees have died³, where a trustee corporation is in liquidation or has been dissolved⁴, where an official person nominated as trustee no longer exists in his official character⁵, and where the trustees disclaim or decline to act⁶, or are abroad⁷, are removed for misconduct⁸, lacks capacity to exercise his functions as a trustee⁹, or are bankrupt¹⁰.

- 1 See the Trustee Act 1925 s 41(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 849. The Trustee Act 1925 applies to charities: see *Re Coates to Parsons* (1886) 34 ChD 370, a case decided on the corresponding provision of the Conveyancing Act 1881 s 31 (repealed). As to the procedure for applying for a vesting order see **TRUSTS** vol 48 (2007 Reissue) PARA 871. The consent of the Charity Commission may be necessary before proceedings are begun: see the Charities Act 1993 s 33; and PARA 588. As to the Charity Commission see PARAS 538-572.
- 2 See the Trustee Act 1925 ss 44-52, 58; and **TRUSTS** vol 48 (2007 Reissue) PARA 875 et seq. See also *A-G v Langham* (1887) 82 LT Jo 246 (where the court vested charity lands in the Attorney General, the trustee being a person mentally disordered).
- 3 *Re Nightingale's Charity* (1844) 3 Hare 336. As to the principles upon which the court proceeds in appointing trustees see generally *Re Tempest* (1866) 1 Ch App 485.
- 4 See the Trustee Act 1925 s 41(1); and **TRUSTS** vol 48 (2007 Reissue) PARAS 849, 856. See also *Re Yarm Free Grammar School* (1853) 10 Hare, App I, V; *Re No 9 Bomore Road* [1906] 1 Ch 359; *Re Nos 56, 58, Albert Road, Norwood* [1916] 1 Ch 289. Cf the Law of Property Act 1925 s 181 (see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1304) and the Companies Act 2006 s 1012 (see **COMPANIES** vol 15 (2009) PARA 1531).
- 5 *A-G v Stephens* (1834) 3 My & K 347.
- 6 *Re Beverley Grammar School* (1839) 9 LJCh 91; and see *Re Lincoln Primitive Methodist Chapel, Re Charitable Trusts Act 1853 and Trustee Act 1850* (1855) 1 Jur NS 1011, where the court confirmed the appointment of the new trustees.
- 7 See *Re Lincoln Primitive Methodist Chapel, Re Charitable Trusts Act 1853 and Trustee Act 1850* (1855) 1 Jur NS 1011.
- 8 *Ex p Greenhouse* (1815) 1 Madd 92.
- 9 See the Trustee Act 1925 s 41(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 856. See also the Trustee Act 1925 ss 36(9), 54; Court of Protection Rules 2007, SI 2007/1744, r 52(1)-(3); and **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 626, 718 et seq; **TRUSTS** vol 48 (2007 Reissue) PARAS 838, 851.
- 10 See the Trustee Act 1925 s 41(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 856.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(v) Appointment by the Court/287. Filling of vacancies.

287. Filling of vacancies.

Where it was not intended that the whole number of trustees originally appointed should always be kept up, the court, before filling vacancies, requires to be satisfied that the number of the existing trustees is insufficient¹. Thus the court has refused to appoint new trustees at the expense of the charity where ten trustees out of 15², and 11 out of 13³, remained to execute the trusts. In other cases where two-thirds or three-quarters of the trustees remained⁴, or where the intention was that the full number should be kept up⁵, the court has filled up the vacancies.

- 1 *Re Worcester Charities* (1847) 2 Ph 284; *Re Shrewsbury Charities* (1849) 1 Mac & G 84; and see *Re Hereford Charities, Re Gloucester Charities* (1842) 6 Jur 289. Jessel MR apparently considered that, where the appointment was by donees of a power, it was the rule in charity cases to keep up the full number of trustees: *Re Cunningham and Bradley and Wilson* [1877] WN 258.
- 2 *Re Worcester Charities* (1847) 2 Ph 284. See also *Re Hereford Charities, Re Gloucester Charities* (1842) 6 Jur 289; *Re Coates to Parsons* (1886) 34 ChD 370 at 377-378 per North J.
- 3 *Re Marlborough School* (1843) 13 LJCh 2.

4 *Re Hereford Charities, Re Gloucester Charities* (1842) 6 Jur 289; *Re Bedford Charity* (undated) cited in 10 Hare App I, IVn.

5 *Davis v Jenkins* (1814) 3 Ves & B 151 at 158-159 per Lord Eldon LC. As to the number of new trustees appointed by the court see **TRUSTS** vol 48 (2007 Reissue) PARA 850.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(v) Appointment by the Court/288. Provision for future appointments.

288. Provision for future appointments.

In making an order appointing new trustees¹, or on the settlement of a scheme, the court may give directions or provide for future appointments, and may allow the trustees to appoint others as occasion requires².

1 *Re East Bergholt Town Lands* (1853) 2 Eq Rep 90.

2 *Re Puckering's Charity* (1854) Seton's Judgments and Orders (7th Edn) 1264.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(vi) Appointment by the Charity Commission/289. Jurisdiction.

(vi) Appointment by the Charity Commission

289. Jurisdiction.

The Charity Commission¹ has the same jurisdiction and powers as the court in relation to the appointment of a charity trustee² or trustee for a charity³, and as to vesting or transferring property and requiring or entitling persons to call for or make transfers of property or payments⁴. It may only exercise its jurisdiction in certain circumstances⁵, and may not make any order under this jurisdiction, other than an order relating to the official custodian or an order appointing such number of additional charity trustees as it considers necessary for the proper administration of the charity⁶, without first complying with the statutory publicity requirement⁷, save where the Commission is satisfied that for any reason such compliance is unnecessary⁸. The statutory publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice⁹. Such notice is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and is to be given in such manner as the Commission thinks sufficient and appropriate¹⁰. Where the Commission gives notice of any proposals under this section, it must take into account any representations made to it within the period specified in the notice, and may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable¹¹.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 As to the meaning of 'charity' see PARA 1.

- 4 See the Charities Act 1993 s 16(1)(b), (c) (amended by the Charities Act 2006 Sch 8 para 109(1), (2)); and PARA 187.
- 5 See the Charities Act 1993 s 16(4); and PARA 187.
- 6 le an order under the Charities Act 1993 s 18(1)(ii): s 20A(1)(b).
- 7 See the Charities Act 1993 s 20A(1) (added by the Charities Act 2006 s 22).
- 8 See the Charities Act 1993 s 20A(4) (as added: see note 7). In which case the publicity requirement does not to apply in relation to the particular order.
- 9 Charities Act 1993 s 20A(2) (as added: see note 7). The time when any such notice is given is to be decided by the Commission: s 20A(3) (as so added).
- 10 Charities Act 1993 s 20A(7) (as added: see note 7).
- 11 Charities Act 1993 s 20A(6) (as added: see note 7).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(4) APPOINTMENT OF TRUSTEES/(vi) Appointment by the Charity Commission/290. Practice.

290. Practice.

When appointing trustees on the settlement of a scheme¹, the Charity Commission's² practice is to introduce a representative element, and to arrange in suitable cases that the representative element shall constitute a majority of the trustees. In framing new schemes, they sometimes increase the number of the trustees, and sometimes reduce it. Provision is also frequently made for ex officio and co-optative trustees.

- 1 As to schemes see PARA 177 et seq.
- 2 As to the Charity Commission see PARAS 538-572.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(5) REMOVAL AND DISCHARGE OF TRUSTEES/(i) Removal by the Court/291. Court's general jurisdiction.

(5) REMOVAL AND DISCHARGE OF TRUSTEES

(i) Removal by the Court

291. Court's general jurisdiction.

In all cases which may require such a remedy the court has jurisdiction to remove existing trustees and substitute new ones. This jurisdiction is merely ancillary to the court's principal duty, which is the protection of trusts¹, and does not depend upon the existence in the instrument of foundation of an express power of removal².

¹ *Letterstedt v Broers* (1884) 9 App Cas 371 at 386, PC. For a form of decree removing a trustee see *A-G v Drummond* (1842) 3 Dr & War 162.

² As to the exercise of express powers of removal see *A-G v Pearson* (1817) 3 Mer 353 at 412-415 per Lord Eldon LC.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(5) REMOVAL AND DISCHARGE OF TRUSTEES/(i) Removal by the Court/292. Removal of trustee for breach of trust.

292. Removal of trustee for breach of trust.

The court has removed trustees who have willfully committed breaches of trust, as by converting a dissenting chapel to the use of a sect contrary to the founder's wishes¹, transferring the property of one charity to another², misapplying increased revenues³, or allowing Unitarians to participate in a charity founded for Protestant dissenters⁴. A trustee who was lessee of part of a charity estate in defiance of the provisions of the scheme was ordered to resign his office or give up his lease⁵. Corporations who are trustees of charities may similarly be removed for breaches of trust⁶. However, charity trustees are not necessarily removed where they have innocently committed a breach of trust⁷.

Trustees who, having committed breaches of trust, refuse to retire voluntarily, may be made to pay the costs of proceedings necessary for the appointment of other trustees⁸.

Where inconvenience as regards the receipt of dividends arose from the trustees' being holders of annual offices, the court appointed others to hold the funds, but allowed the office-holders to retain certain rights of nomination⁹.

¹ *A-G v Pearson* (1835) 7 Sim 290 at 309 per Shadwell V-C; *A-G v Aust* (1865) 13 LT 235. See also *A-G v Munro* (1848) 2 De G & Sm 122 (where a minister of the Established Church of Scotland seceded from that body to the Free Church, and was removed from his charge); *A-G v Anderson* (1888) 57 LJCh 543.

² *Newsome v Flowers* (1861) 30 Beav 461.

³ *Coventry Corp'n v A-G* (1720) 7 Bro Parl Cas 235, HL.

⁴ *Shore v Wilson* (1842) 9 Cl & Fin 355, HL; *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 at 861 per Lord Brougham.

⁵ *Foord v Baker* (1859) 27 Beav 193.

⁶ *A-G v Earl of Clarendon* (1810) 17 Ves 491 at 499 per Grant MR. See also *A-G v Governors of Foundling Hospital* (1793) 2 Ves 42 at 46 per Lord Commissioner Eyre; *A-G v Dixie, ex p Bosworth School* (1805) 13 Ves 519; *Ex p Kirkby Ravensworth Hospital* (1808) 15 Ves 305 at 314 per Lord Eldon LC; *Ex p Greenhouse* (1815) 1 Madd 92.

⁷ *A-G v Stafford Corp'n* (1740) Barn Ch 33; *A-G v Caius College* (1837) 2 Keen 150.

⁸ *A-G v Murdoch* (1856) 2 K & J 571.

⁹ *Re Taylor's Charity, ex p Blackburne* (1820) 1 Jac & W 297.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(5) REMOVAL AND DISCHARGE OF TRUSTEES/(i) Removal by the Court/293. Removal of trustees on other grounds.

293. Removal of trustees on other grounds.

A reason sufficient to prevent the appointment of a trustee is not necessarily a sufficient ground for removing an existing trustee¹. Where no breach of trust has been committed, trustees, if otherwise unexceptionable, are not removed merely on the ground of not possessing the required religious² or residential³ qualification, or on the ground of temporary absence from the United Kingdom⁴, or because they were appointed irregularly⁵. Bankruptcy is not necessarily⁶, though it is usually⁷, a ground for removal.

1 *A-G v Clapham* (1853) 10 Hare 540 at 613 per Page Wood V-C (trustees of a chapel); revsd on appeal without affecting this point (1855) 4 De GM & G 591; and see (1855) 4 De GM & G at 632 per Lord Cranworth LC.

2 *Baker v Lee* (1860) 8 HL Cas 495 at 513 per Lord Cranworth; *A-G v Clifton* (1863) 32 Beav 596 at 601 per Romilly MR; *A-G v Bishop of Limerick* (1870) 18 WR 1192.

3 *A-G v Earl of Clarendon* (1810) 17 Ves 491; *A-G v Earl of Stamford* (1843) 1 Ph 737 at 747-748 per Lord Cottenham LC; and see *A-G v Clifton* (1863) 32 Beav 596 at 601 per Romilly MR.

4 *Re Moravian Society* (1858) 4 Jur NS 703.

5 *A-G v Cuming* (1843) 2 Y & C Ch Cas 139 at 150-151 per Shadwell V-C; *A-G v Daugars* (1864) 33 Beav 621.

6 *Archbold v Ireland Charitable Bequests Comrs* (1849) 2 HL Cas 440.

7 *Bainbrigge v Blair* (1839) 1 Beav 495; *Re Roche* (1842) 1 Con & Law 306; *Re Barker's Trusts* (1875) 1 ChD 43.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(5) REMOVAL AND DISCHARGE OF TRUSTEES/(ii) Removal by the Charity Commission/294. Jurisdiction.

(ii) Removal by the Charity Commission

294. Jurisdiction.

The Charity Commission¹ has the same jurisdiction and powers as the High Court to discharge or remove a charity trustee² or trustee for a charity³, or to remove an officer or employee⁴. The jurisdiction is exercisable upon and subject to the same conditions as the jurisdiction to appoint new trustees⁵. It also has jurisdiction to remove charity trustees and other persons where it is necessary for the protection of the charity⁶.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 As to the meaning of 'charity' see PARA 1.

4 See the Charities Act 1993 s 16(1)(b); and PARA 187.

5 See the Charities Act 1993 s 20A; see PARA 289. Before making an order removing a charity trustee, or trustee for a charity, or an officer, agent or employee of charity, the Commission must give him one month's notice of its proposals, inviting representations to be made to it within a period specified in the notice, save where the person cannot be found or has no known address in the United Kingdom: s 20A(5) (added by the Charities Act 2006 s 22). As to the meaning of United Kingdom see PARA 187.

6 See the Charities Act 1993 ss 18-18A; and PARA 198 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(5) REMOVAL AND DISCHARGE OF TRUSTEES/(iii) Discharge and Retirement/295. Discharge by order of Charity Commission.

(iii) Discharge and Retirement

295. Discharge by order of Charity Commission.

The Charity Commission¹ may exercise its jurisdiction to discharge a charity trustee² or trustee for a charity³ on his own application⁴.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 As to the meaning of 'charity' see PARA 1.

4 Charities Act 1993 s 16(8) (amended by the Charities Act 2006 Sch 8 para 109(9)). Notice must be given to the other trustees: see s 16(9); and PARA 187.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(5) REMOVAL AND DISCHARGE OF TRUSTEES/(iii) Discharge and Retirement/296. Retirement without a new appointment.

296. Retirement without a new appointment.

Under the Trustee Act 1925, a trustee may retire from the trust by deed, provided that after his discharge there will be a trust corporation or at least two individuals to act as trustees, and provided that his co-trustees and any person entitled to appoint new trustees consent by deed to his retirement¹. There may also be express provision in the trust instrument for the possibility of retirement without a new appointment.

1 See the Trustee Act 1925 s 39; and **TRUSTS** vol 48 (2007 Reissue) PARA 891 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(6) THE OFFICIAL CUSTODIAN FOR CHARITIES/297. Status and capacity.

(6) THE OFFICIAL CUSTODIAN FOR CHARITIES

297. Status and capacity.

The official custodian for charities is the successor for all purposes both of the Official Trustee of Charity Lands and of the Official Trustees of Charitable Funds¹. He is a corporation sole having perpetual succession and using an official seal, which is officially and judicially noticed². His function is to act as trustee for charities in the cases provided for by the Charities Act 1993³. In relation to property vested in him in trust for a charity, he may not exercise any powers of management, and is in the position of a corporate custodian trustee⁴ save that he may not charge fees⁵.

1 Previously provided for by the Charities Act 1960 s 48(6) (repealed), which also vested in the official custodian property previously vested in the official trustee or official trustees, and provided that any Act, scheme, deed or other document referring to or relating to the official trustee or official trustees is, so far as the context permits, to have effect as if the official custodian had been mentioned instead: s 48(6)(a), (b) (repealed). Despite the repeal of the Charities Act 1960 s 48(6), the official custodian continues to be treated as the successor of both offices for all purposes as if the functions of the official trustee or trustees had been functions of the official custodian and as if the official trustee or trustees had been, and had discharged their functions as, holder of the office of official custodian: Charities Act 2006 Sch 10 para 26(1). Despite the repeal of the Charities Act 1960 s 48(6), and without affecting the generality of the preceding provisions, any property which immediately before the commencement of that repeal was by virtue of s 48(6) held by the official custodian as if vested in him under the Charities Act 1993 s 21 (see PARA 299 text and note 12) continues to be so held and any enactment or document referring to the official trustee or trustees continues to have effect, so far as the context permits, as if the official custodian had been mentioned instead: Charities Act 2006 Sch 10 para 26(2).

Any scheme, order, certificate or other document issued under or for the purposes of the Charitable Trusts Acts 1853 to 1939 and having effect in accordance with the Charities Act 1960 s 48(4) (repealed) immediately before the commencement of that repeal continues to have the same effect, and to be enforceable or liable to be discharged in the same way, as would have been the case if that repeal had not come into force; any such document, and any document under the seal of the official trustees of charitable funds may be proved as if the Charities Act 1960 had not been passed: Charities Act 2006 Sch 10 para 25.

2 See the Charities Act 1993 s 2(1). The office is held by such individual as the Charity Commission may from time to time designate: s 2(2) (substituted by the Charities Act 2006 Sch 8 para 98(2)). This provision does not affect the validity of any such designation made by the Charity Commissioners which was in effect immediately before 27 February 2007: Charities Act 2006 Sch 10 para 19. Where any instrument issued by the official custodian in connection with a disposal of any property under the Charities Act 1992 s 29 (repealed) (see PARA 299) contains a printed reproduction of his official seal, that instrument has effect as if it were duly sealed with his official seal: s 30(5) (amended by the Charities Act 2006 Sch 8 para 122(6)). As to the Charity Commission see PARAS 538-572.

3 Charities Act 1993 s 2(1). These cases are discussed in the ensuing paragraphs. He may also act as trustee for shared church buildings under the Sharing of Church Buildings Act 1969 s 2, and the ownership of an existing or proposed church building which is subject to a sharing agreement and which is, or will be, owned by all or some of the sharing churches may be vested in him: see s 2(2); and **ECCLLESIASTICAL LAW** vol 14 PARA 1188. The vesting of ownership in the official custodian is by order under the Charities Act 1993: see the Sharing of Church Buildings Act 1969 s 2(4) (amended by the Charities Act 1993 s 98(1), Sch 6 para 11(2)). As to vesting property in the official custodian see PARA 299. The purposes of a sharing agreement must be limited to purposes which are exclusively charitable according to the law of England and Wales: Sharing of Church Buildings Act 1969 s 2(5). See generally **ECCLLESIASTICAL LAW** vol 14 PARA 1186 et seq.

4 I.e. a corporation appointed under the Public Trustee Act 1906 s 4: see **TRUSTS** vol 48 (2007 Reissue) PARA 792.

5 See the Charities Act 1993 s 22(1); and PARA 301.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(6) THE OFFICIAL CUSTODIAN FOR CHARITIES/298. Performance of functions; accounts.

298. Performance of functions; accounts.

The official custodian for charities¹ must perform his duties in accordance with directions, general or special, given by the Charity Commission²; his expenses, so far as they are not reimbursed to or recovered by him as trustee for any charity³, must be defrayed by the Commission⁴. Anything which is required to or may be done by, to or before the official custodian may be done by, to or before any member of the staff of the Commission generally or specially authorised by it to act for him during a vacancy in his office or otherwise⁵. He must keep accounts and records relating to them as directed by the Treasury in such form, in such manner and at such times as may be so directed⁶. The accounts so prepared must be examined

and certified by the Comptroller and Auditor General⁷, who must send to the Commission a copy of the accounts as certified by him together with his report on them⁸.

1 As to the official custodian for charities see PARA 297 et seq.

2 As to the Charity Commission see PARAS 538-572.

3 As to the meaning of 'charity' see PARA 1.

4 Charities Act 1993 s 2(3) (amended by the Charities Act 2006 Sch 8 para 98(3)). As to service of directions see the Charities Act 1993 s 91; and PARA 550.

5 Charities Act 1993 s 2(4) (amended by the Charities Act 2006 Sch 8 para 98(4)).

6 Charities Act 1993 s 2(6).

7 Charities Act 1993 s 2(7) (amended by the Charities Act 2006 Sch 8 para 98(5)). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

8 Charities Act 1993 s 2(8) (added by the Charities Act 2006 Sch 8 para 98(6)). The Commission must publish and lay before Parliament a copy of the documents so received: Charities Act 1993 s 2(9) (added by the Charities Act 2006 Sch 8 para 98(6)).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(6) THE OFFICIAL CUSTODIAN FOR CHARITIES/299. Vesting property in official custodian.

299. Vesting property in official custodian.

Prior to 1 September 1992¹, the court could by order vest any property held by or in trust for a charity in the official custodian for charities², or authorise or require persons in whom such property was vested to transfer it to him, or appoint any person to transfer such property to him³. The Charity Commissioners (now the Charity Commission) had the same powers in this respect⁴. Personal property⁵ held by or in trust for a charity or comprised in a testamentary gift to a charity could be transferred to the official custodian with his agreement⁶.

Under the Charities Act 1992 the provision relating to personal property⁷ was repealed⁸, and the official custodian was required to divest himself of all the property he holds in that capacity, except any land⁹ and any property other than land vested in him by virtue of an order of the Charity Commissioners acting under their power¹⁰ to act for the protection of charities¹¹. Further, the power of the court is now limited to land or an interest in land¹².

Any funds vested in the Accountant General¹³ and held by him in trust for any charity or ecclesiastical corporation¹⁴ in the Church of England may be transferred to the official custodian or the appropriate authority¹⁵ if, on an application made to him by the Charity Commission¹⁶ or the Church Commissioners, the Accountant General thinks fit so to direct¹⁷. Any funds so transferred vest in and are held by the official custodian or the appropriate authority respectively in trust for the charity or ecclesiastical corporation upon the trusts on which the funds were held before the transfer¹⁸.

1 The date on which the Charities Act 1992 s 29 (repealed) came into force.

2 As to the official custodian for charities see PARA 297.

3 Charities Act 1960 s 16(1) (repealed: see now the Charities Act 1993 s 21(1); and the text and note 11).

4 See the Charities Act 1960 s 18(1)(c) (repealed). This was subject to the conditions contained in s 18(4), (5) (repealed) as to exercise of the jurisdiction. These provisions have been repealed and re-enacted in the Charities Act 1993 s 16(1)(c), (4), (5): see PARA 187. As to the Charity Commission see PARA 538.

5 In this provision 'personal property' extended to any real security but did not include any interest in land other than by way of security: Charities Act 1960 s 16(2) (repealed) (see the text and note 7).

6 Charities Act 1960 s 16(2) (repealed) (see the text and note 7). In the case of a testamentary gift to a charity, the official custodian's receipt was a complete discharge of the personal representative: s 16(2) (repealed).

7 I.e. the Charities Act 1960 s 16(2) (repealed).

8 See the Charities Act 1992 ss 47, 78(2), Sch 3 para 4, Sch 7 (s 47, Sch 3 repealed). Any provision of the trusts of a charity, or of any directions given by an order of the Commissioners (now the Charity Commission) made in connection with a transaction requiring the sanction of an order under the Charities Act 1960 s 29(1) (repealed), ceased to have effect if and to the extent that it required or authorised personal property (including any mortgage or other real security, but excluding any interest in land other than such an interest by way of mortgage or other security) of the charity to be transferred to or held by the official custodian: Charities Act 1992 s 30(2) (repealed). Section 30(2) did not apply to: (1) any provision of an order made under the Charities Act 1960 s 20 (repealed) or the Charities Act 1993 s 18 (see PARAS 561, 566-567); or (2) any provision of any other order, or of any scheme, of the Commissioners if the provision requires trustees of a charity to make payments into an account maintained by the official custodian with a view to the accumulation of a sum as capital of the charity, whether or not by way of recoupment of a sum expended out of a charity's permanent endowment: s 30(3) (amended by the Charities Act 1993 s 98(1), Sch 6 para 29(4); now repealed). Such a provision under head (2) above had effect as if, instead of requiring the trustees to make such payments into an account maintained by the official custodian, it required the trustees to make such payments into an account maintained by them or by any other person (apart from the official custodian) who is either a trustee for the charity or a person nominated by them to hold such payments in trust for the charity: Charities Act 1992 s 30(3) (repealed).

9 For these purposes, 'land' did not include any interest in land by way of mortgage or other security: Charities Act 1992 s 29(13) (repealed).

10 I.e. under the Charities Act 1960 s 20 (repealed) or the Charities Act 1993 s 18 (see PARA 561).

11 Charities Act 1992 s 29(1), (2) (repealed). The disposal of any property by the official custodian in accordance with the Charities Act 1992 s 29 operates to discharge him from his trusteeship of that property: s 30(4).

12 See the Charities Act 1993 s 21(1). The court may by order vest in the official custodian any land held by or in trust for a charity, authorise or require the persons in whom any such land is vested to transfer it to him or appoint any person to transfer any such land to him, but this does not apply to any interest in land by way of mortgage or other security: s 21(1). As to the concurrent jurisdiction of the Commission see PARA 187.

13 As to the Accountant General see **COURTS**.

14 'Ecclesiastical corporation' means a capitular body within the meaning of the Cathedrals Measure 1963 (see **ECCLESIASTICAL LAW** vol 14 PARAS 610, 636) or the incumbent of a benefice (see **ECCLESIASTICAL LAW** vol 14 PARA 541): Administration of Justice Act 1982 s 41(3) (substituted by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 25(b)). As from the relevant date, any reference in the Administration of Justice Act 1982 s 41(3) (as so substituted) to a capitular body is to be construed as a reference to the corporate body of the cathedral: see the Cathedrals Measure 1999 ss 36(2), 38(2), (3); and **ECCLESIASTICAL LAW**. 'Relevant date', in relation to any cathedral existing at the passing of the Cathedrals Measure 1999, means the date appointed by the Archbishops of Canterbury and York under s 38(2): see s 35(1). See further **ECCLESIASTICAL LAW**.

15 The 'appropriate authority' is, in the case of funds held in trust for a cathedral, the corporate body of that cathedral established under the Cathedrals Measure 1999 s 9(1)(a) and, in the case of funds held in trust for a benefice, the Diocesan Board of Finance for the diocese in which that benefice is situated: s 41(3) (substituted by the Church of England

16 As to the Charity Commission see PARAS 538-572.

17 Administration of Justice Act 1982 s 41(1) (as substituted: see note 15).

18 Administration of Justice Act 1982 s 41(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 25(a)).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(6) THE OFFICIAL CUSTODIAN FOR CHARITIES/300. Divestment of land subject to the Reverter of Sites Act 1987.

300. Divestment of land subject to the Reverter of Sites Act 1987.

Where any land is vested in the official custodian for charities¹ in trust for a charity and it appears to the Charity Commission² that the provisions of the Reverter of Sites Act 1987³ which replace a right of reverter by trust will, or are likely to, operate in relation to the land at a particular time or in particular circumstances, the concurrent jurisdiction⁴ of the Commission in relation to the discharge of a trustee for a charity⁵ may, at any time before those provisions of that Act operate, be exercised by it of its own motion for the purpose of making an order discharging the official custodian from his trusteeship of the land, and making consequential vesting orders and giving consequential directions⁶. Where: (1) the provisions of the Reverter of Sites Act 1987⁷ have already operated in relation to any land which, immediately before the time when that provision operated, was vested in the official custodian in trust for a charity⁸; and (2) it remains vested in him but on the trust arising under that Act⁹, the court¹⁰ or the Commission (of its own motion) may make an order discharging the official custodian from his trusteeship of the land, and make such vesting orders and give such directions as appear to it to be necessary or expedient in consequence¹¹. Where, in certain circumstances¹², an order is made discharging the official custodian from his trusteeship of any land, the persons in whom the land is to be vested on the discharge of the official custodian are the relevant charity trustees¹³ unless the court (or as the case may be) the Commission is satisfied that it would be appropriate for it to be vested in some other persons¹⁴.

An appeal against such an order made by the Commission to lies to the Tribunal¹⁵ at the instance of the Attorney General, the charity trustees of the charity, the charity itself (if a body corporate) or any other person who is or may be affected by the order¹⁶. The Tribunal has the power to do any of the following: (a) quash the order and, if appropriate, remit the matter to the Commission; (b) substitute for the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission¹⁷.

1 As to the official custodian for charities see PARA 297 et seq.

2 As to the Charity Commission see PARAS 538-572.

3 Ie the Reverter of Sites Act 1987 s 1: see PARA 70.

4 Under the Charities Act 1993 s 16: see PARAS 187, 189-190, 295.

5 As to the meaning of 'charity' see PARA 1.

6 Charities Act 1993 s 23(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 26; and the Charities Act 2006 Sch 8 para 115(1), (2)). The vesting or transfer of any property in accordance with such an order does not operate as a breach of any covenant or condition against alienation or give rise to a forfeiture: see PARA 187 note 6.

7 See note 3. Any reference to the Reverter of Sites Act 1987 s 1 (see PARA 70) operating in relation to any land is a reference to a trust arising in relation to the land under that provision: Charities Act 1993 s 23(9) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 26).

8 Charities Act 1993 s 23(2)(a).

9 Charities Act 1993 s 23(2)(b).

10 As to the meaning of 'court' see PARA 175 note 12.

11 Charities Act 1993 s 23(2) (amended by the Charities Act 2006 Sch 8 para 115(3)). Where the Reverter of Sites Act 1987 s 1 (see PARA 70) has operated in relation to any such land as is mentioned in the Charities Act 1993 s 23(2)(a) (see the text to note 8) and the land remains vested in the official custodian as mentioned in s 23(2)(b) (see the text to note 9), then, all the powers, duties and liabilities that would, apart from s 23 be those of the official custodian as trustee of the land are instead those of the charity trustees of the charity concerned; and those trustees have power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them: s 23(5) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 26). The Charities Act 1993 s 23(5) is not to be taken to require or authorise those trustees to sell the land at a time when it remains vested in the official custodian: s 23(6).

12 Ie where an order: (1) is made by the court under the Charities Act 1993 s 21(2) (see PARA 302) by the Commission under s 16 (see PARAS 187, 189-190, 295), on the grounds that the Reverter of Sites Act 1987 s 1 (see PARA 70) will, or is likely to, operate in relation to the land; or (2) is made by the court or the Commission under the Charities Act 1993 s 23(2) (see the text and notes 7-11): s 23(3)(a), (b) (amended by the Charities Act 2006 Sch 8 para 115(4)).

13 For these purposes, the 'relevant charity trustees' means: (1) in relation to an order made under the Charities Act 1993 s 21(2) (see PARA 302) by the Commission under s 16 (see PARAS 187, 189-190, 295), on the grounds that the Reverter of Sites Act 1987 s 1 (see PARA 70) will, or is likely to, operate in relation to the land, the charity trustees of the charity in trust for which the land is vested in the official custodian immediately before the time when the order takes effect; or (2) in relation to an order made by the court or the Commission under the Charities Act 1993 s 23(2) (see the text and notes 7-11), the charity trustees of the charity in trust for which the land was vested in the official custodian immediately before the time when the Reverter of Sites Act 1987 s 1 operated in relation to the land: Charities Act 1993 s 23(3) (as amended: see note 12), (4). As to the meaning of 'charity trustees' generally see PARA 1 note 10.

14 Charities Act 1993 s 23(3) (as amended: see note 12). Where the official custodian has been discharged from his trusteeship of any land by an order under s 23(2) (see the text and notes 7-11), and the land has been vested in the charity trustees or other persons in accordance with s 23(3) (see the text and notes 12-13), the land is to be held by those trustees, or as the case may be by those persons, as trustees on the terms of the trust arising under the Reverter of Sites Act 1987 s 1 (see PARA 70): Charities Act 1993 s 23(7) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 26). The official custodian is not liable to any person in respect of any loss or misapplication of any land vested in him in accordance with that provision (semble, the Reverter of Sites Act 1987 s 1) unless it is occasioned by or through any willful neglect or default of his or of any person acting for him; but the Consolidated Fund is liable to make good to any person any sums for which the official custodian may be liable by reason of any such neglect or default: Charities Act 1993 s 23(8). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

15 As to the Tribunal see PARA 573 et seq.

16 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

17 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(6) THE OFFICIAL CUSTODIAN FOR CHARITIES/301. Management of property vested in official custodian.

301. Management of property vested in official custodian.

As regards land vested in the official custodian for charities¹ in trust for a charity, the charity trustees² have the power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them³. However, if any land is so vested in the official custodian by virtue of an order under the Charity Commission's powers to act for the protection of charities⁴, the power conferred on the charity trustees⁵ is not exercisable by them in relation to any

transaction affecting that land, unless the transaction is authorised by order of the court⁶ or the Charity Commission⁷. Where any land is vested in the official custodian in trust for a charity⁸, the charity trustees have the same power to make obligations entered into by them binding on the land as if it were vested in them, and any covenant, agreement or condition which is enforceable by or against the official custodian by reason of the land being vested in him is enforceable by or against the charity trustees as if the land were vested in them⁹. These provisions do not authorise any charity trustees or charity to impose any personal liability on the official custodian¹⁰.

Where property is vested in the official custodian in trust for a charity, he must not exercise any powers of management, but, as trustee of any property, he has all the same powers, duties and liabilities, and is entitled to the same rights and immunities, and is subject to the control and orders of the court, as a corporation appointed custodian trustee¹¹, except that he has no power to charge fees¹². However, where the official custodian is entitled as trustee for a charity to the custody of securities or documents of title relating to the trust property, he may permit them to be in the possession or under the control of the charity trustees without thereby incurring any liability¹³.

1 As to the official custodian for charities see PARA 297 et seq.

2 As to the meaning of 'charity trustees' see PARA 1 note 10. In the case of a corporate charity, references in the Charities Act 1993 s 22(2)-(4) to 'charity trustees' should be read as references to 'the charity': s 22(5).

3 Charities Act 1993 s 22(2). Charity trustees are not required to obtain the official custodian's permission or to join him in proceedings claiming possession of charitable property: *Muman v Nagasena* [1999] 4 All ER 178, [2000] 1 WLR 299, CA.

4 Ie an order under the Charities Act 1993 s 18: see PARA 561. As to the Charity Commission see PARAS 538-572.

5 Ie by the Charities Act 1993 s 22(2): see the text and notes 1-3.

6 As to the meaning of 'court' see PARA 175 note 12.

7 Charities Act 1993 s 22(3) (amended by the Charities Act 2006 Sch 8 para 114).

8 As to the meaning of 'charity' see PARA 1.

9 Charities Act 1993 s 22(4).

10 Charities Act 1993 s 22(6).

11 Ie under the Public Trustee Act 1906 s 4: see **TRUSTS** vol 48 (2007 Reissue) PARA 792.

12 Charities Act 1993 s 22(1).

13 Charities Act 1993 s 22(7).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(6) THE OFFICIAL CUSTODIAN FOR CHARITIES/302. Discharge and termination of trusts; effect of orders.

302. Discharge and termination of trusts; effect of orders.

The court¹ may by order discharge the official custodian for charities² from his trusteeship as regards all or any property vested in him in trust for a charity³. Where the official custodian is discharged from his trusteeship of any property, or the trusts on which he holds any property come to an end, the court may make such vesting orders and give such directions as may

seem to the court to be necessary or expedient in consequence⁴. No person is liable for any loss occasioned by his acting in conformity with such an order or any order vesting property in the official custodian⁵, or by his giving effect to anything done in pursuance of such orders, and no person is excused from so doing by reason of the order having been in any respect improperly obtained⁶.

1 As to the meaning of 'court' see PARA 175 note 12. This power may also be exercised by the Charity Commission: see the Charities Act 1993 s 16(1)(b), (c); and PARA 187. As to the Commission's powers see PARA 299. As to the Charity Commission see PARAS 538-572.

2 As to the official custodian for charities see PARA 297 et seq.

3 Charities Act 1993 s 21(2).

4 Charities Act 1993 s 21(3). The vesting or transfer of any property in accordance with such an order does not operate as a breach of any covenant or condition against alienation or give rise to a forfeiture: see PARA 187 note 6.

5 See under the Charities Act 1993 s 21(1): see PARA 299.

6 Charities Act 1993 s 21(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/6. TRUSTEES/(6) THE OFFICIAL CUSTODIAN FOR CHARITIES/303. Liability of official custodian.

303. Liability of official custodian.

The official custodian for charities¹ is not liable as trustee for any charity in respect of any loss or of the misapplication of any property, unless it is occasioned by or through the willful neglect or default of the custodian² or any person acting for him³. The Consolidated Fund is liable to make good to any charity any sums for which the official custodian is liable by reason of such neglect or default⁴.

1 As to the official custodian for charities see PARA 297 et seq.

2 'Wilful default' has been considered judicially in other contexts (eg *Re Vickery*, *Vickery v Stephens* [1931] 1 Ch 572; *Re Lucking's Will Trusts*, *Renwick v Lucking* [1967] 3 All ER 726, [1968] 1 WLR 866; *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407, CA), but it is doubtful whether those decisions are useful in relation to the official custodian's liability.

3 Charities Act 1993 s 2(5). As to the power to delegate his functions see s 2(4); and PARA 298.

4 Charities Act 1993 s 2(5). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(i) Obligation to Register/304. The register.

7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS

(1) REGISTRATION OF CHARITIES

(i) Obligation to Register

304. The register.

The Charities Act 1993 makes provision for a register of charities¹. It is the duty of the Charity Commission to continue to keep the register², in which every charity must be entered³ apart from the following⁴: (1) exempt charities⁵; (2) charities which are specifically excepted⁶; and (3) charities whose gross income does not exceed £5,000⁷. A qualifying excepted charity which is for the time being registered⁸ must be removed from the register if it so requests⁹. The register must contain the name of every registered charity and such other particulars of, and such other information relating to, every such charity as the Commission thinks fit¹⁰. An institution which the Commission no longer considers is a charity must be removed from the register¹¹; if the removal is due to any change in its trusts, the removal has effect from the date of the change¹². A charity which ceases to exist or does not operate must also be removed¹³. The register, including entries cancelled on removal of an institution, must be kept open to public inspection at all reasonable times¹⁴, and copies or particulars of the trusts of a registered charity, as supplied to the Commission, must be kept by them so long as it remains registered and be open to public inspection at all reasonable times¹⁵. Where any information contained in the register is not in documentary form, it must be made available for public inspection in legible form at all reasonable times¹⁶.

The Commission must, on request, furnish any person with copies of, or extracts from, any document in its possession which is for the time being open to inspection¹⁷.

1 See the Charities Act 1993 s 3.

2 See the Charities Act 1993 s 3(1) (substituted by the Charities Act 2006 s 9). The Commission must keep the register in such manner as its think fit: Charities Act 1993 s 3(2) (as so substituted). As to the Charity Commission see PARAS 538-572. As to transitional provisions and savings in relation to the substituted s 3 and the new s 3A see the Charities Act 2006 (Commencement No 5, Transitional and Transitory Provisions and Savings) Order 2008, SI 2008/3267, arts 3, 4.

3 Charities Act 1993 s 3A(1) (added by the Charities Act 2006 s 9).

4 Charities Act 1993 s 3A(2) (as added: see note 3).

5 Charities Act 1993 s 3A(2)(a) (as added: see note 3). As to such charities see PARAS 305, 315-317. Prior to the coming into force of the Charities Act 1992 s 2 on 1 September 1992, exempt charities could be registered voluntarily. The registration of any such charity ceased to have effect at that time: s 2(8) (repealed).

6 See the Charities Act 1993 s 3A(2)(b), (c); and PARA 305.

7 Charities Act 1993 s 3A(2)(d) (as added: see note 3). The Minister may by order substitute a different sum for the sum for the time being specified, but only if he considers it expedient to do so in consequence of changes in the value of money or with a view to extending the scope of the exception from registration: see s 3A(7)(b), (8)(b) (as so substituted).

8 As from a day to be appointed this applies instead to a charity which is for the time being registered under the Charities Act 1993 s 3A(6) whereby a charity within s 3A(2)(b), (c) or 3(2)(d) must if it so requests, be registered in the register of charities: ss 3(6), 3A(6) (s 3(6) prospectively substituted and s 3A(6) prospectively added by the Charities Act 2006 s 9). As from a day to be appointed no such day had been appointed.

9 See the Charities Act 1993 s 3(6); Charities Act 2006 (Commencement No 5, Transitional and Transitory Provisions and Savings) Order 2008, SI 2008/3267, art 7.

10 Charities Act 1993 s 3(3) (as substituted: see note 2).

11 Charities Act 1993 s 3(4)(a) (as substituted: see note 2).

12 Charities Act 1993 s 3(5) (as substituted: see note 2).

13 Charities Act 1993 s 3(4)(b) (as substituted: see note 2).

14 Charities Act 1993 s 3(7) (as substituted: see note 2). If the Commission so determines, s 3(7) will not apply to any particular information contained in the register and specified in their determination: s 3(9) (as so substituted).

An appeal against a decision of the Commission not to make such a determination lies to the Tribunal at the instance of the Attorney General, the charity trustees of the charity to which the information relates, the charity itself (if a body corporate), or any other person who is or may be affected by the decision: Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4). The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission: Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

15 Charities Act 1993 s 3(10) (as substituted: see note 2). However, a person is not required to supply the Commission with copies of schemes for the administration of a charity made otherwise than by the court, or to notify the Commission of any change made with respect to a registered charity by such a scheme, or require a person, if he refers the Commission to a document or copy already in the possession of the Commission, to supply a further copy of the document; but where a copy of any such document relating to a registered charity is in the possession of the Commission, a copy of it must be open to inspection under s 3(10) as if supplied to the Commission: s 3B(4), (5) (added by the Charities Act 2006 s 9).

16 Charities Act 1993 s 3(8) (as substituted: see note 2).

17 Charities Act 1993 s 84 (amended by the Charities Act 2006 Sch 8 para 163). As to the meaning of 'document' see PARA 260 note 2. As to the fees payable see the Charities Act 1993 s 85; the Charity Commissioners' Fees (Copies and Extracts) Regulations 1992, SI 1992/2986; and PARA 552.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(i) Obligation to Register/305. Charities not obliged to be registered.

305. Charities not obliged to be registered.

The categories of charities which are not required to be registered are:

- 103 (1) exempt charities¹;
- 104 (2) until a day to be appointed², any charity which for the time being is permanently or temporarily excepted by order of the Charity Commission³, or by regulations made by the Minister, which complies with any conditions of the exception and whose gross income⁴ does not exceed £100,000⁵; and
- 105 (3) any charity whose gross income does not exceed £5,000⁶.

1 Charities Act 1993 s 3A(2)(a) (added by the Charities Act 2006 s 9). As to exempt charities see PARAS 315-317.

2 The relevant provisions of the Charities Act 1993 s 3A cease to have effect on such day as the Minister may by order appoint: s 3A(11) (as added: see note 1). As to the Minister see PARA 580.

3 As to the Charity Commission see PARAS 538-572.

4 Gross income is construed, in relation to a particular time, as a reference to the charity's gross income in its financial year immediately preceding that time or, if the Charity Commission so determines, as a reference to the amount which the Commission estimates to be the likely amount of the charity's gross income in such financial year of the charity as is specified in the determination: Charities Act 1993 s 3A(10) (as added: see note 1).

5 See the Charities Act 1993 s 3A(2)(b)-(c) (as added: see note 1; and s 3A(2)(c) amended by SI 2006/2951).

For the purposes of s 3A(2)(b), any order made or having effect as if made under s 3(5)(b) (as originally enacted) and in force immediately before 31 January 2009 has effect as from that day as if made under s 3A(2)(b), and no order may be made under s 3A(2)(b) so as to except on or after 31 January 2009 any charity that was not excepted immediately before that day: Charities Act 1993 s 3A(3), (9) (as so added).

For the purposes of s 3A(2)(c), any regulations made or having effect as if made under the Charities Act 1993 s 3(5)(b) (as originally enacted) and in force immediately before 31 January 2009 have effect as from that day as if made under s 3A(2)(c), and such regulations must be made under s 3A(2)(c) as are necessary to secure that all of the 'formerly specified institutions' are excepted under that provision, subject to compliance with any conditions of the exception and the financial limit mentioned in that provision: Charities Act 1993 s 3A(4)(a)-(b), (9) (as so added). Otherwise, no regulations may be made under s 3A(2)(c) so as to except on or after 31 January 2009 any description of charities that was not excepted immediately before that day: Charities Act 1993 s 3A(4)(c), (9) (as so added). The 'formerly specified institutions' are: (1) those institutions to which the School Standards and Framework Act 1998 s 23(1)(a) or (b) or s 23(2) apply; (2) any Education Action Forum established by virtue of s 10(1); (3) any foundation to which s 23(3) applies; or (4) any institution ceasing to be an exempt charity by virtue of the Charities Act 2006 s 11 or any order made thereunder: see the Charities Act 1993 ss 3A(5) (as so added), 3(5B)(a), (b) (repealed).

In relation to the gross income limit, the Minister may by order substitute a different sum for the sum for the time being specified, but only if he considers it expedient to do so with a view to reducing the scope of the exception from registration: s 3A(7)(a), (8)(a) (as so substituted). Note that these charities are not necessarily excepted from other obligations under the Charities Act 1993. Statutory instruments have been made excepting certain charities or types of charity from registration: see the Charities (Exception of Voluntary Schools from Registration) Regulations 1960, SI 1960/2366; Charities (Exception of Certain Charities for Boy Scouts and Girl Guides from Registration) Regulations 1961, SI 1961/1044; Charities (Exception from Registration and Accounts) Regulations 1965, SI 1965/1056; Charities (Exception of Universities from Registration) Regulations 1966, SI 1966/965; and the Charities (Exception from Registration) Regulations 1996, SI 1996/180 (amended by SI 2001/260, SI 2002/1598 and SI 2007/2655) (which give exception from registration to charities for the advancement of religion where the application of income is conditional upon the upkeep of graves and the income does not exceed a specified amount). In other cases charities have been excepted individually by order: see eg the *Report of the Charity Commissioners for England and Wales for 1963* (HC Paper (1963-64) no 298) p 10 (Roman Catholic Church and Church of Wales charities).

6 Charities Act 1993 s 3A(2)(d) (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(i) Obligation to Register/306. Duty to apply for registration.

306. Duty to apply for registration.

Where a charity required to be registered¹ is not registered, it is the duty of the charity trustees² to apply for it to be registered and to supply the Charity Commission with the required documents and information³. The required documents and information are: (1) copies of the charity's trusts⁴ or, if they are not set out in any extant document, particulars of them⁵; (2) such other documents or information as may be prescribed by regulations made by the Minister⁶; and (3) such other documents or information as the Commission may require for the purposes of the application⁷.

Any person not fulfilling these duties may be required by order of the Commission to make good the default⁸.

1 Ie by virtue of the Charities Act 1993 s 3A(1); see PARA 304.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 Charities Act 1993 s 3B(1) (added by the Charities Act 2006 s 9). As to the Charity Commission see PARAS 538-572.

4 As to the meaning of 'trusts' see PARA 217 note 5.

5 Charities Act 1993 s 3B(2)(a) (as added: see note 3).

6 Charities Act 1993 s 3B(2)(b) (as added: see note 3).

7 Charities Act 1993 s 3B(2)(c) (as added: see note 3).

8 See the Charities Act 1993 s 87; and PARA 551. Disobedience to such an order attracts the same sanctions as a contempt of court: see s 88; and PARA 551.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(i) Obligation to Register/307. Continuing duty to supply information.

307. Continuing duty to supply information.

Where an institution is for the time being registered, it is the duty of the charity trustees¹, or the last charity trustees, to notify the Charity Commission² if the institution³ ceases to exist, or if there is any change in its trusts⁴ or in the particulars of it entered in the register, and, so far as appropriate, must supply particulars of any such change and copies of any new trusts or alterations to the trusts⁵. Any person failing to do so may be required by order to make good the default⁶.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 As to the Charity Commission see PARAS 538-572.

3 As to the meaning of 'institution' see PARA 1.

4 As to the meaning of 'trusts' see PARA 217 note 5.

5 Charities Act 1993 s 3B(3) (added by the Charities Act 2006 s 9). They need not, however, supply copies of schemes made otherwise than by the court, or copies of documents already in the possession of the Commission, or notify the Commission of any change made with respect to a registered charity by such a scheme: see the Charities Act 1993 s 3B(4); and PARA 304.

It is submitted that the duty is not applicable in a case where the trusts have been modified under ss 74-74C, 75A, or 75B in so far as s 75A(5)-(11) applies to that provision (as substituted and added) (see PARA 217-219, 222-223), for the Commission will then have all the relevant information. These provisions do not contain a provision specifically excluding s 3B(3); if, however, a resolution of the trustees under these provisions can be construed as a 'scheme for the administration of a charity' the duty would be excluded by s 3B(4)(a).

6 See the Charities Act 1993 s 87; and PARA 551.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(i) Obligation to Register/308. Publication of registered charity's status.

308. Publication of registered charity's status.

Where a charity¹ is a registered charity whose gross income² in its last financial year³ exceeded £10,000⁴, the fact that it is a registered charity must be stated in legible characters⁵:

- 106 (1) in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity⁶;
- 107 (2) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity⁷; and
- 108 (3) in all bills rendered by the charity and in all its invoices, receipts and letters of credit⁸.

If any person⁹ issues or authorises the issue of any document falling within head (1) or (3) above or signs any document falling within head (2) above, and in either case the fact that the charity is a registered charity is not stated¹⁰, he is guilty of an offence¹¹. However, no proceedings for such an offence may be instituted except by or with the consent of the Director of Public Prosecutions¹².

1 As to the meaning of 'charity' see PARA 1.

2 As to the meaning of 'gross income' see PARA 217 note 2.

3 As to the meaning of 'financial year' see PARA 217 note 3.

4 Charities Act 1993 s 5(1) (amended by SI 1995/2696). The Minister may by order substitute a different sum for the sum for the time being specified: Charities Act 1993 s 5(6) (amended by SI 2006/2951).

5 Charities Act 1993 s 5(2) (amended by the Welsh Language Act 1993 ss 32(2), 35, Sch 2). The statement must be in English, except that, in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh if it consists of or includes the words 'elusen cofrestredig' (the Welsh equivalent of 'registered charity'): Charities Act 1993 s 5(2A) (added by the Welsh Language Act 1993 s 32(3)).

6 Charities Act 1993 s 5(2)(a). This provision has effect whether the solicitation is express or implied, and whether the money or other property is to be given for any consideration or not: s 5(3).

7 Charities Act 1993 s 5(2)(b).

8 Charities Act 1993 s 5(2)(c). See also s 68(1); and PARA 237.

9 'Person' includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1. As to offences by corporate bodies see the Charities Act 1993 s 95; and PARA 582.

10 See the statement as required by the Charities Act 1993 s 5(2): see the text and notes 5-8.

11 Charities Act 1993 s 5(4), (5) (amended by the Welsh Language Act 1993 s 32(4), (5)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Charities Act 1993 s 5(4), (5).

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

12 Charities Act 1993 s 94(1), (2)(a).

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309. Direction for change of name of charity.

In certain specified circumstances the Charity Commission¹ may give a direction to the charity trustees² requiring the name of the charity to be changed to such other name as the charity trustees may determine with the approval of the Commission³. The circumstances specified are if⁴:

- 109 (1) it is a registered charity and its name (the 'registered name') (a) is the same as, or (b) is in the opinion of the Commission too like, the name, at the time when

- the registered name was entered in the register in respect of the charity, of any other charity (whether registered or not)⁵;
- 110 (2) the name⁶ of the charity is in the opinion of the Commission likely to mislead the public as to the true nature of (a) the purposes of the charity as set out in its trusts, or (b) the activities which the charity carries on under its trusts in pursuit of those purposes⁷;
- 111 (3) the name⁸ of the charity includes any word or expression for the time being specified in regulations made by the Minister⁹ and the inclusion in its name of that word or expression is in the opinion of the Commission likely to mislead the public in any respect as to the status of the charity¹⁰;
- 112 (4) the name¹¹ of the charity is in the opinion of the Commission likely to give the impression that the charity is connected in some way with Her Majesty's government or any local authority, or with any other body of persons or any individual, when it is not so connected¹²; or
- 113 (5) the name of the charity is in the opinion of the Commission offensive¹³.

A change of name by a charity under these provisions does not affect any rights or obligations of the charity; and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name¹⁴.

An appeal against a direction under these provisions requiring the name of a charity to be changed lies to the Tribunal¹⁵ at the instance of the Attorney General, the charity trustees of the charity to which the direction relates, the charity itself (if a body corporate) or any other person who is or may be affected by the direction¹⁶. The Tribunal has the power to quash the direction and, if appropriate, remit the matter to the Commission, as well as the power to substitute for the direction any other direction which could have been given by the Commission¹⁷.

Until a day to be appointed, these provisions do not apply to an exempt charity¹⁸.

1 As to the Charity Commission see PARAS 538-572.

2 For these purposes, any reference to charity trustees in relation to a charity which is a company, is to be read as a reference to the directors of the company: Charities Act 1993 s 6(8). As to the meaning of 'charity trustees' generally see PARA 1 note 10.

On receiving such a direction the charity trustees must give effect to it notwithstanding anything in the trusts of the charity, and, having done so, must forthwith notify the Commission of the charity's new name and of the date on which the change occurred: s 6(4), (5) (s 6(5) amended by the Charities Act 2006 Sch 8 para 100(2), (3)). This is without prejudice to the Charities Act 1993 s 3B(3) (see PARA 307): s 6(5) (as so amended).

3 Charities Act 1993 s 6(1) (amended by the Charities Act 2006 s 75(1), Sch 8 para 100(2)).

4 Charities Act 1993 s 6(2) (amended by the Charities Act 2006 s 75(1), Sch 8 para 100(2)).

5 Charities Act 1993 s 6(2)(a) (as amended: see note 4). Any direction on this ground must be given within 12 months of the time when the registered name was entered in the register in respect of the charity: s 6(3). For the purposes of this provision minor variations in names are to be disregarded.

6 In relation to a registered charity the name by which it is registered: the Charities Act 1993 s 6(2) (as amended: see note 4).

7 Charities Act 1993 s 6(2)(b) (as amended: see note 4).

8 See note 6.

9 As to the making of regulations see the Charities Act 1993 s 86(3); and PARA 584. As to the Minister see PARA 580.

- 10 Charities Act 1993 s 6(2)(c) (as amended see note 4; and SI 2006/2951).
- 11 See note 6.
- 12 Charities Act 1993 s 6(2)(d) (as amended: see note 4).
- 13 Charities Act 1993 s 6(2)(e) (as amended: see note 4).
- 14 Charities Act 1993 s 6(6).
- 15 As to the Tribunal see PARA 573 et seq.
- 16 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 17 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 18 Charities Act 1993 s 6(9) (prospectively repealed by the Charities Act 2006 Sch 5 para 1, Sch 9 para 1). As to exempt charities see PARA 315.

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310. Direction to change name of a charity which is a company.

Where a direction¹ requiring a charity's² name to be changed is given with respect to a charity which is a company, the direction must require the name of the charity to be changed by resolution of the directors of the company³. Where the name of such a charity is changed accordingly, the registrar of companies must⁴ enter the new name on the register of companies in place of the former name⁵ and issue a certificate of incorporation altered to meet the circumstances of the case⁶.

- 1 ie a direction under the Charities Act 1993 s 6: see PARA 309.
- 2 As to the meaning of 'charity' see PARA 1.
- 3 Charities Act 1993 s 7(1). Where such a resolution of the directors is passed, the company must give notice of the change to the registrar of companies: Charities Act 1993 s 7(2) (substituted by SI 2007/2194).
- 4 If satisfied that the new name complies with the requirements of Part 5 of the Companies Act 2006: see the Charities Act 1993 s 7(3)(a) (amended by SI 2009/1941).
- 5 Charities Act 1993 s 7(3)(a).
- 6 Charities Act 1993 s 7(3)(b). The change of name has effect from the date on which the altered certificate is issued: s 7(3).

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(ii) Effect of, and Claims for and Objections to, Registration

311. Effect of registration.

For all purposes other than rectification of the register of charities¹, any institution² must be conclusively presumed to have been a charity³ at any time when it is or was on the register⁴. It has been held that the same presumption applies where a body which is not registered at a material date later becomes registered without any intervening alteration in its constitution or purposes⁵.

Refusal of registration does not, however, conclusively establish that the body is not charitable⁶.

1 As to the register see PARA 304 et seq.

2 As to the meaning of 'institution' see PARA 1.

3 As to the meaning of 'charity' see PARA 1.

4 Charities Act 1993 s 4(1). For examples of the application of this presumption see *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52; *Finch v Poplar Borough Council* (1967) 66 LGR 324.

5 *Re Murawski's Will Trusts, Lloyds Bank Ltd v Royal Society for the Prevention of Cruelty to Animals* [1971] 2 All ER 328, [1971] 1 WLR 707.

6 *Over Seventies Housing Association v Westminster City Council* [1974] RA 247, where refusal of registration did not prevent the body from arguing that it was a charity and therefore entitled to rating relief, though the argument in fact failed.

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312. Objections to registration and claims for removal.

Any person who is or may be affected by the registration of an institution¹ as a charity² may object, on the ground that it is not a charity, to its being entered by the Charity Commission³ in the register of charities, and if the institution is already registered any such person may apply to the Commission for it to be removed from the register on that ground⁴. Provision may be made by regulations made by the Minister⁵ as to the manner in which any such objection or application is to be made, prosecuted or dealt with⁶.

Questions affecting the registration of or the removal from the register of an institution may be considered afresh by the Commission, notwithstanding that they may have been determined on an appeal to the Tribunal⁷, if it appears to the Commission that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision⁸.

1 As to the meaning of 'institution' see PARA 1.

2 As to the meaning of 'charity' see PARA 1.

3 As to the Charity Commission see PARAS 538-572.

4 Charities Act 1993 s 4(2) (amended by the Charities Act 2006 Sch 8 para 99(2)).

5 As to the Minister see PARA 580.

6 Charities Act 1993 s 4(2) (as amended: see note 4). At the date at which this volume states the law, no such regulations had been made. The informal procedure adopted is described in the *Report of the Charity Commissioners for England and Wales for 1964* (HC Paper (1965-66) no 8) p 12.

7 le under the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4); see PARA 314. As to the Tribunal see PARA 573 et seq.

8 Charities Act 1993 s 4(5) (amended by the Charities Act 2006 Sch 8 para 99(5)).

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313. Disclosure of information to and by the Charity Commission.

The Charities Act 1993 makes special provision for the disclosure of information to and by the Charity Commission¹.

Any relevant public authority may disclose information to the Commission if the disclosure is made for the purpose of enabling or assisting the Commission to discharge any of its functions², save that Revenue and Customs information³ may be disclosed only if it relates to an institution, undertaking or body falling with one or more of the following categories⁴: (1) a charity⁵; (2) an institution which is established for charitable, benevolent or philanthropic purposes⁶; (3) an institution by or in respect of which a claim for exemption has at any time been made under provisions of the Income and Corporation Taxes Act 1988⁷; (4) a subsidiary undertaking of a charity⁸; and (5) a body entered in the Scottish Charity Register which is managed or controlled wholly or mainly in or from England or Wales⁹.

The Charity Commission may disclose to any relevant public authority any information received by it in connection with any of its functions if the disclosure is made for the purpose of enabling or assisting the relevant public authority to discharge any of its functions or if the information so disclosed is otherwise relevant to the discharge of any of the functions of the relevant public authority¹⁰, save that the Commission's power to disclose such information is exercisable subject to any express restriction subject to which the information was disclosed to the Commission¹¹.

Nothing in the above provisions¹² authorises the making of a disclosure which contravenes the Data Protection Act 1998 or is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000¹³.

1 See the Charities Act 1993 ss 10-10C and notes 2-13. Section 10 is substituted and ss 10A-10C are added by the Charities Act 2006 Sch 8 para 104 which is in force so far as it confer powers to make regulations and fully in force except in relation to the Charities Act 1993 s 10B or any reference to s 10B. As to the Charity Commission see PARAS 538-572.

2 Charities Act 1993 s 10(1) (as substituted: see note 1). 'Relevant public authority' means any government department (including a Northern Ireland department), any local authority, any constable, and any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities): Charities Act 1993 s 10C(1) (as added: see note 1).

3 'Revenue and Customs information' means information held as mentioned in the Commissioners for Revenue and Customs Act 2005 s 18(1): Charities Act 1993 s 10C(3) (as added: see note 1). As to Revenue and Customs see **CUSTOMS AND EXCISE**.

4 Charities Act 1993 s 10(2) (as substituted: see note 1).

5 Charities Act 1993 s 10(2)(a) (as substituted: see note 1).

6 Charities Act 1993 s 10(2)(b) (as substituted: see note 1).

7 The Income and Corporation Taxes Act 1988 s 505(1): Charities Act 1993 s 10(2)(c) (as substituted: see note 1).

8 Charities Act 1993 s 10(2)(d) (as substituted: see note 1). 'Subsidiary undertaking of a charity' means an undertaking (as defined by the Companies Act 2006 s 1161(1) see **COMPANIES** vol 14 (2009) PARA 26) in relation to which a charity is (or is to be treated as) a parent undertaking in accordance with the provisions of s 1162, Sch 7 or two or more charities would, if they were a single charity, be (or be treated as) a parent undertaking in accordance with those provisions: Charities Act 1993 s 10(3) (as so substituted; amended by SI 2008/948). For these purposes 'undertaking' includes a charity which is not an undertaking as defined by the Companies Act 2006 s 1161(1): Charities Act 1993 s 10(4) (as so substituted; amended by SI 2008/948).

9 Charities Act 1993 s 10(2)(e) (as substituted: see note 1).

10 Charities Act 1993 s 10A(1) (as added: see note 1). For the purposes of s 10A 'relevant public authority' has the same meaning as in note 2, but also includes any body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities) in a country or territory outside the United Kingdom: s 10C(2) (as added: see note 1). As to the meaning of the United Kingdom see PARA 187.

11 Charities Act 1993 s 10A(2) (as added: see note 1). This restriction does not apply in relation to Revenue and Customs information disclosed to the Commission under s 10(1), but any such information may not be further disclosed (whether under s 10(1) or otherwise) except with the consent of the Commissioners for Her Majesty's Revenue and Customs: s 10A(3) (as so added). As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

Any responsible person who discloses information in contravention of s 10A(3) is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months (or, as from a day to be appointed, 12 months) in relation to an offence committed in England and Wales before or to a fine not exceeding the statutory maximum or both or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both: s 10A(4) (as so added); Charities Act 2006 Sch 10 para 20. However, it is a defence for a responsible person charged with such an offence to prove that he reasonably believed that the disclosure was lawful or that the information had already and lawfully been made available to the public: Charities Act 1993 s 10A(5) (as so added). 'Responsible person' means a person who is or was a member of the Charity Commission, a member of the staff of the Commission, a person acting on behalf of the Commission or a member of the staff of the Commission, or a member of a committee established by the Commission: s 10A(7) (as so added). As to the statutory maximum fine on summary conviction see PARA 308.

12 Or, as from a day to be appointed, in those provisions as applied by the Charities Act 1993 s 10B(1)-(4) (as added: see note 1). At the date at which this volume states the law no such day had been appointed.

13 Charities Act 1993 s 10C(4) (as added: see note 1). As to the Data Protection Act 1998 see **CONFIDENCE AND DATA PROTECTION**. As to the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 506 et seq.

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314. Appeals relating to registration.

An appeal against any decision of the Charity Commission¹ to enter or not to enter an institution² in the register of charities³, or to remove or not to remove an institution from the register, lies to the Tribunal⁴ at the instance of the Attorney General⁵, or the persons who are or claim to be the charity trustees⁶ of the institution, the institution itself if a body corporate⁷, or any other person who is or may be affected by the decision⁸.

If the Commission decides to enter an institution in the register or not to remove one from the register and there is an appeal to the Tribunal against that decision, then until it is known whether the decision is to stand or not, the entry in the register must be maintained, but must

be in suspense and marked as such⁹. While the entry is in suspense, the institution is deemed not to be on the register for the purposes of the conclusive presumption as to charitable status¹⁰ which arises from the fact of registration¹¹.

The Tribunal has the power to quash the order in whole or in part and (if appropriate) remit the matter to the Commission or direct the Commission to rectify the register¹².

- 1 As to the Charity Commission see PARAS 538-572.
- 2 As to the meaning of 'institution' see PARA 1.
- 3 See an appeal against a decision of the Commission under the Charities Act 1993 ss 3, 3A (see PARA 304 et seq).
- 4 As to the Tribunal see PARA 573 et seq.
- 5 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2)(a), Table Col 1 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 6 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 7 Previously, where the institution was a corporate body it could not itself appeal, but this point was not taken in the first two appeals to be heard: *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA; *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA (decided under earlier legislation).
- 8 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2)(b), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 9 See the Charities Act 1993 s 4(4) (amended by the Charities Act 2006 Sch 8 para 99(4)).
- 10 As to this presumption see the Charities Act 1993 s 4(1); and PARA 311.
- 11 Charities Act 1993 s 4(4) (as amended: see note 9). By analogy with *Re Murawski's Will Trusts*, *Lloyds Bank Ltd v Royal Society for the Prevention of Cruelty to Animals* [1971] 2 All ER 328, [1971] 1 WLR 707, the statutory presumption would probably be applied retrospectively if it was ultimately determined that the decision was to stand.
- 12 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

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(iii) Exempt Charities

315. Exempt charities.

Certain charities¹ are largely exempt from the Charity Commission's jurisdiction². They are known as exempt charities for the purposes of the Charities Act 1993³, and are not required to be entered in the register of charities⁴.

- 1 These include certain institutions exempted under earlier Acts specifically:

- 3 (1) any institution which, if the Charities Act 1960 had not been passed, would be exempted from the powers and jurisdiction, under the Charitable Trusts Acts 1853 to 1939 (repealed), of the Charity Commissioners (now the Charity Commission) or Minister of Education (apart from any power of the Commissioners or Minister to apply those Acts in whole or in part to charities otherwise exempt) by the terms of any enactment not contained in those Acts other than the

Places of Worship Registration Act 1855 s 9 (see **ECCLESIASTICAL LAW**) (but, as from a day to be appointed, this does not include any Investment Fund or Deposit Fund within the meaning of the Church Funds Investment Measure 1958, any investment fund or deposit fund within the meaning of the Methodist Church Funds Act 1960, or the representative body of the Welsh Church or property administered by it (Charities Act 1993 Sch 2 para (a), note 1 (Sch 2 amended by the Charities Act 2006 Sch 8 para 177; and the Charities Act 1993 Sch 2 notes 1, 2 prospectively added and Sch 2(a) prospectively amended by the Charities Act 2006 s 11(2), (9)));

- 4 (2) the universities of Oxford, Cambridge, London, Durham and Newcastle; the colleges and halls in the universities of Oxford, Cambridge, Durham and Newcastle; and Queen Mary and Westfield College in the University of London; and, until a day to be appointed, the colleges of Winchester and Eton (Charities Act 1993 Sch 2 para (b) (amended by the Charities Act 2006 s 11(3)(a) and prospectively amended by s 11(3)(b), Sch 9));
- 5 (3) any university, university college or institution connected with it declared by Order in Council to be an exempt charity (Charities Act 1993 Sch 2 para (c));
- 6 (4) the Qualifications and Curriculum Authority (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 876) (Charities Act 1993 Sch 2 para (da) (added by the Education Act 1993 Sch 19 para 175; and substituted by the Education Act 1997 Sch 7 para 7(a));
- 7 (5) a higher education corporation (Charities Act 1993 Sch 2 para (h) (added by the Teaching and Higher Education Act 1998 Sch 4));
- 8 (6) a successor company to a higher education corporation (see the Charities Act 1993 Sch 2 para (i));
- 9 (7) a further education corporation (Sch 2 para (j) (added by the Charities Act 2006 s 11(5)));
- 10 (8) the Boards of Trustees of the Victoria and Albert Museum, the Science Museum, the Armouries, the Royal Botanic Gardens, Kew, the National Museums and Galleries on Merseyside, the National Gallery, the Tate Gallery, the National Portrait Gallery and the Wallace Collection; the trustees of the British Museum, the trustees of the Natural History Museum, the trustees of the Imperial War Museum and the trustees of the National Maritime Museum (Charities Act 1993 Sch 2 paras (k)-(v));
- 11 (9) any institution administered by or on behalf of an institution included above for the general purposes of, or for any special purpose of or in connection with, the last-mentioned institution (but, as from a day to be appointed, this does not include any student's union) (Sch 2 para (w), note 2 (Sch 2 notes 1, 2 prospectively added and Sch 2(w) prospectively amended by the Charities Act 2006 s 11(2), (9)));
- 12 (10) until a day to be appointed, the Church Commissioners and any institution administered by them (Charities Act 1993 Sch 2 para (x) (prospectively repealed by the Charities Act 2006 s 11(7), Sch 9));
- 13 (11) registered industrial and provident societies (but only, from a day to be appointed, those which are also registered in the register of social landlords under the Housing Act 1996 Pt 1 (see the Charities Act 1993 Sch 2 para (y) (prospectively amended by the Charities Act 2006 s 11(8)));
- 14 (12) until a day to be appointed, societies or branches registered under the Friendly Societies Act 1974 (see the Charities Act 1993 Sch 2 para (y) (prospectively amended by the Charities Act 2006 s 11(8)));
- 15 (13) the Board of Governors of the Museum of London (Charities Act 1993 Sch 2 para (z)); and
- 16 (14) the British Library Board (Sch 2 para (za)).

The Minister may by order make such further amendments of Sch 2 as he considers appropriate for securing: (1) that (so far as they are charities) institutions of a particular description become or (as the case may be) cease to be exempt charities; (2) that (so far as it is a charity) a particular institution becomes or (as the case may be) ceases to be an exempt charity; or (3) for removing from that Schedule an institution that has ceased to exist: Charities Act 2006 s 11(11). Such an order may only be made for purposes (1) and (2) if the Minister is satisfied that the order is desirable in the interests of ensuring appropriate or effective regulation of the

charities or charity concerned in connection with compliance by the charity trustees of the charities or charity with their legal obligations in exercising control and management of the administration of the charities or charity: s 11(12). The Minister may by order make such amendments or other modifications of any enactment as he considers appropriate in connection with charities of a particular description becoming, or ceasing to be, exempt charities, or a particular charity becoming, or ceasing to be, an exempt charity, by virtue of these provisions: s 11(13). As to the meaning of 'exempt charity' see PARA 315 (definition applied by s 11(4)). As to the Minister see PARA 580.

The following Orders in Council have been made under the Charities Act 1960 Sch 2 para (c) (repealed) or under the Charities Act 1993 Sch 2 para (c) (repealed) and designate numerous universities and institutions as exempt charities: see the following Exempt Charities Orders SI 1962/1343; SI 1965/1715; SI 1966/1460; SI 1967/821; SI 1969/1496; SI 1978/453; SI 1982/1661; SI 1983/1516; SI 1984/1976; SI 1987/1823; SI 1989/2394; SI 1993/2359; SI 1994/1905; SI 1994/2956; SI 1995/2998; SI 1996/1637; SI 1996/1932; SI 1996/1933; SI 1996/1932; SI 1999/3139; SI 2000/1826; SI 2002/1626; SI 2003/1881; SI 2004/1995; SI 2006/1452; SI 2007/630; SI 2007/1364; SI 2007/2919.

2 As to the Charity Commission see PARAS 538-572.

3 See the Charities Act 1993 s 96(1). In addition, until a day to be appointed, certain common investment funds are exempt charities under s 24(8): see PARA 420. Sch 5A paras 1-11 do not apply to an exempt charity: Sch 5A para 12 (Sch 5A added by the Charities Act 2006 Sch 6).

4 See the Charities Act 1993 s 3A(2)(a); and PARA 305.

UPDATE

315 Exempt charities

NOTE 1--Head (4). Charities Act 1993 Sch 2 para (da) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 8, Sch 16 Pt 4.

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316. Increased regulation of exempt charities.

As from a day to be appointed¹, the Charities Act 1993 contains provisions for the increased regulation of exempt charities under the Act². These provide that such a charity is no longer exempt from: (1) the power of the Charity Commission³ to require a charity's name to be changed⁴; (2) the power of Commission to institute inquiries with regard to charities, but only where this has been requested by the charity's principal regulator⁵; (3) the power of the Commission to call for documents and search records⁶; (4) the powers of the Commission under its concurrent jurisdiction with the High Court exercisable at the application of the Attorney General or applicants relating to a charity whose gross annual income does not exceed £500⁷; (5) the need to secure the consent of the court of Commission for a scheme providing for expenditure on promoting any Parliamentary Bill⁸; (6) the power of the Commission to act for the protection of charities⁹; (7) the power of the Commission to give directions about dormant bank accounts¹⁰; (8) charity proceedings¹¹; and (9) the power of the Commission to order a person acting as charity trustee¹² while disqualified to repay sums received from a charity¹³.

1 The Charities Act 2006 Sch 5 is to be brought into force by order made under s 79(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 See the Charities Act 2006 Sch 5.

3 As to the Charity Commission see PARAS 538-572.

- 4 See the Charities Act 2006 Sch 5 para 1; and PARA 309.
- 5 See the Charities Act 2006 Sch 5 para 2; and PARA 554. As to the principal regulator of an exempt charity see PARA 317.
- 6 See the Charities Act 2006 Sch 5 para 3; and PARA 557.
- 7 See the Charities Act 2006 Sch 5 para 4; and PARA 187.
- 8 See the Charities Act 2006 Sch 5 para 5; and PARA 328.
- 9 See the Charities Act 2006 Sch 5 para 6; and PARAS 561, 566.
- 10 See the Charities Act 2006 Sch 5 para 7; and PARA 569.
- 11 See under the Charities Act 1993 s 33: Charities Act 2006 s 12, Sch 5 para 8; and see PARAS 586-589.
- 12 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 13 See the Charities Act 2006 Sch 5 para 9; and PARA 274.

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317. Exempt charities: principal regulators.

The Minister¹ may make regulations prescribing any body or Minister of the Crown as the principal regulator of an exempt charity². As from a day to be appointed, the following provisions apply³. The principal regulator must do all that it or he reasonably can to promote compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity⁴. The Charity Commission⁵ must consult the charity's principal regulator⁶ before exercising any specific power in relation to an exempt charity⁷.

1 As to the Minister see PARA 580.

2 See the Charities Act 2006 s 13(1), (4)(b). As to the meaning of 'exempt charity' see PARA 315 (definition applied by the Charities Act 2006 s 13(4)(b)). Such regulations may make such amendments or other modifications of any enactment as the Minister considers appropriate for the purpose of facilitating, or otherwise in connection with, the discharge by a principal regulator of its or his duty: s 13(5). At the date at which this volume states the law no such regulations had been made.

3 The Charities Act 2006 s 13(1)-(3) come into force as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed.

4 Charities Act 2006 s 13(2)-(3).

5 As to the Charity Commission see PARAS 538-572.

6 As to the meaning of 'principal regulator' see PARA 318 note 1.

7 Charities Act 1993 s 86A (added by the Charities Act 2006 s 14). As to the meaning of 'exempt charity' see PARA 315.

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318. Disclosure of information to and by principal regulators of exempt charities.

As from a day to be appointed, the Charities Act 1993 makes special provision for the disclosure of information to and by the principal regulators of exempt charities¹.

Any relevant public authority may disclose information to the principal regulator of an exempt charity if the disclosure is made for the purpose of enabling or assisting him or it to discharge any of his or its functions², save that Revenue and Customs information³ may be disclosed only if it relates to the exempt charity in relation to which the principal regulator has functions as such or a subsidiary undertaking of the exempt charity⁴.

The principal regulator of an exempt charity may disclose to any relevant public authority any information received by him or it in connection with any of his or its functions if the disclosure is made for the purpose of enabling or assisting the relevant public authority to discharge any of its functions or if the information so disclosed is otherwise relevant to the discharge of any of the functions of the relevant public authority⁵, save that the power of the principal regulator to disclose such information is exercisable subject to any express restriction subject to which the information was disclosed to him or it⁶.

Nothing in the above provisions⁷ authorises the making of a disclosure which contravenes the Data Protection Act 1998 or is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000⁸.

1 The Charities Act 1993 ss 10, 10A apply as modified by s 10B: see s 10B(1) and notes 2-8. Section 10 is substituted and ss 10A-10C are added by the Charities Act 2006 Sch 8 para 104 which is in force so far as it confer powers to make regulations and fully in force except in relation to the Charities Act 1993 s 10B or any reference to s 10B. As to the meaning of exempt charities see PARA 315. 'Principal regulator', in relation to an exempt charity, means the charity's principal regulator within the meaning of the Charities Act 2006 s 13 (see PARA 317): Charities Act 1993 s 97(1) (amended by the Charities Act 2006 Sch 8 para 174(d)).

2 Charities Act 1993 ss 10(1), 10B(2) (as substituted and added: see note 1). As to the meaning of 'relevant public authority' see PARA 313 note 2.

3 As to the meaning of 'Revenue and Customs information' see PARA 313 note 3.

4 Charities Act 1993 ss 10(2), 10B(3) (as substituted and added (see note 1); and s 10B(3) amended by SI 2008/948). For these purposes 'subsidiary undertaking of the exempt charity' means an undertaking (as defined by the Companies Act 2006 s 1161(1) (see **COMPANIES** vol 14 (2009) PARA 26)) in relation to which: (1) the exempt charity is (or is to be treated as) a parent undertaking in accordance with the provisions of the Companies Act 2006 s 1162, Sch 7; or (2) the exempt charity and one or more other charities would, if they were a single charity, be (or be treated as) a parent undertaking in accordance with those provisions: Charities Act 1993 ss 10A(3), 10B(3) (s 10B(3) amended by SI 2008/948).

5 Charities Act 1993 ss 10A(1), 10B(2) (as added: see note 1). As to the meaning of 'relevant public authority' see PARA 313 note 10.

6 Charities Act 1993 ss 10A(2), 10B(2) (as added (see note 1)). This restriction does not apply in relation to Revenue and Customs information disclosed to the principal regulator of an exempt charity under s 10(1), but any such information may not be further disclosed (whether under s 10(1) or otherwise) except with the consent of the Commissioners for Her Majesty's Revenue and Customs: s 10A(3) (as so added). As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

Any responsible person who discloses information in contravention of s 10A(3) is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months (or, as from a day to be appointed, 12 months) in relation to an offence committed in England and Wales before or to a fine not exceeding the statutory maximum or both or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both: s 10A(4) (as so added); Charities Act 2006 Sch 10 para 20. However, it

is a defence for a responsible person charged with such an offence to prove that he reasonably believed that the disclosure was lawful or that the information had already and lawfully been made available to the public: Charities Act 1993 s 10A(5) (as so added). 'Responsible person' means a person specified by regulations under the Charities Act 2006 s 13(4)(b) (see PARA 313 note 2); Charities Act 1993 ss 10A(7), 10B(4) (as so added). Regulations under the Charities Act 2006 s 13(4)(b) may also make such amendments or other modifications of any enactment as the Secretary of State considers appropriate for securing that any disclosure provisions that would otherwise apply in relation to the principal regulator of an exempt charity do not apply in relation to that body or person in its or his capacity as principal regulator: Charities Act 1993 s 10B(5) (as so added). For these purposes 'disclosure provisions' means provisions having effect for authorising, or otherwise in connection with, the disclosure of information by or to the principal regulator concerned: s 10B(6) (as so added).

7 le those provisions as applied by the Charities Act 1993 s 10B(1)-(4) (as added: see note 1).

8 Charities Act 1993 s 10C(4) (as added: see note 1). As to the Data Protection Act 1998 see **CONFIDENCE AND DATA PROTECTION**. As to the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 506 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(iv) Register of Charity Mergers/319. The register.

(iv) Register of Charity Mergers

319. The register.

The Charity Commission¹ must establish and maintain a register of charity mergers², to be kept in such manner as it thinks fit³. The register must contain an entry in respect of every relevant charity merger which is notified to the Commission⁴. A 'relevant charity merger'⁵ is one which falls into one of the following categories: (1) a merger of two or more charities in connection with which the transferee has transferred⁶ to it all the property of the transferor or transferors, each of which ceases to exist on after the transfer⁷; (2) a merger of two or more charities in connection with which both or all of them cease to exist, or will cease to exist, on or after the transfer of all their property to a new charity⁸; and (3) a merger as in head (1) or (2) but which involves the transfer of all the unrestricted property of a charity which also has a permanent endowment, and whose trusts do not contain provision for the termination of the charity⁹.

Notification of a relevant charity merger may be given to the Commission at any time after the transfer of property involved in the merger has taken place or, if more than one transfer of property is so involved, at any time after the last of those transfers has taken place¹⁰. The notification is to be given by the charity trustees¹¹ and must specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place and include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities¹².

Where such notification is given, the Commission must enter on the register the date when the transfer or transfers of property involved took place and such other particulars of the merger as the Commission thinks fit¹³.

Where a pre-merger vesting declaration¹⁴ is made in connection with a relevant charity merger, then notification must be given to the Commission in respect of the merger once the transfer, or the last of the transfers, has taken place¹⁵. In addition to providing the information above, the notification must also contain the fact that the vesting declaration has been made, the date when it was made and the date on which the vesting of title under the declaration took place¹⁶. This additional information must be entered on the register by the Commission¹⁷.

1 As to the Charity Commission see PARAS 538-572.

- 2 Charities Act 1993 s 75C(1) (added by the Charities Act 2006 s 44).
- 3 Charities Act 1993 s 75C(2) (as added: see note 2). The register must be open to public inspection at all reasonable times and where any information contained therein is not in documentary form it must be available for public inspection in legible form at all reasonable times: s 75D(3)-(5) (as so added).
- 4 Charities Act 1993 s 75C(3) (as added: see note 2). As from a day to be appointed, nothing in s 75D applies in a case where s 69K (amalgamation of CIOs) or s 69M (transfer of CIO's undertaking) applies: s 75C(11) (prospectively added by the Charities Act 2006 s 44). As to CIO amalgamations see PARA 248. As to CIO transfers of undertakings see PARA 249. At the date at which this volume states the law no such day had been appointed.
- 5 Including those taking place before the day on which these provisions came into force: Charities Act 2006 Sch 10 para 14.
- 6 Any reference to a transfer of property under these provisions includes a transfer effected by a vesting declaration: Charities Act 1993 s 75C(10)(a) (as added: see note 2).
- 7 Charities Act 1993 s 75C(4)(a) (as added: see note 2).
- 8 Charities Act 1993 s 75C(4)(b) (as added: see note 2).
- 9 Charities Act 1993 s 75C(5) (as added: see note 2). For these purposes any reference in head (1) or (2) to this charity ceasing to exist is omitted: s 75C(5) (as so added).
- 10 Charities Act 1993 s 75C(6) (as added: see note 2).
- 11 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 12 Charities Act 1993 s 75C(8)(a)-(b) (as added: see note 2).
- 13 Charities Act 1993 s 75D(1)(2)(a), (c), (5) (as added: see note 2).
- 14 Ie under the Charities Act 1993 s 75E: see PARA 411.
- 15 Charities Act 1993 s 75C(7) (as added: see note 2).
- 16 Charities Act 1993 s 75C(8)(c), (9) (as added: see note 2).
- 17 Charities Act 1993 s 75D(2)(b), (5) (as added: see note 2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(iv) Register of Charity Mergers/320. Effect of registration.

320. Effect of registration.

Where a relevant charity merger¹ is registered in the register of charity mergers², any gift which is expressed as a gift to the transferor³, and takes effect on or after the date of registration of the merger, takes effect as a gift to the transferee⁴. This provision does not apply if the transferor is a charity which prior to the merger had both a permanent endowment and other, unrestricted property and as such continues to exist after the merger⁵, and the gift is intended to be held subject to the trusts on which the whole or part of the charity's permanent endowment is held⁶.

¹ As to the meaning of 'relevant charity merger' see the Charities Act 1993 s 75C; and PARA 319 (definition applied by s 75F(4) (s 75F added by the Charities Act 2006 s 44)).

² Charities Act 1993 s 75F(1) (as added: see note 1). As to the registers see the Charities Act 1993 s 75C(1); and PARA 319.

3 As to the meaning of 'transferor' see the Charities Act 1993 s 75C; and PARA 319 (definition applied by s 75F(4) (as added: see note 1)).

4 See the Charities Act 1993 s 75F(1), (2) (as added: see note 1). As to the meaning of 'transferee' see s 75E; and PARA 411 (definition applied by s 75F(4) (as added: see note 1)).

5 If the transferor is a charity within the Charities Act 1993 s 75C(5) (see PARA 319).

6 See the Charities Act 1993 s 75F(2), (3) (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(1) REGISTRATION OF CHARITIES/(v) Other Registration Requirements/321. Registration in connection with lotteries.

(v) Other Registration Requirements

321. Registration in connection with lotteries.

There are registration requirements where a lottery is promoted on behalf of a charity. These are considered elsewhere¹.

1 See the Gambling Act 2005; and **LICENSING AND GAMBLING**.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(2) LOCAL AUTHORITIES' FUNCTIONS/(i) Local Indexes/322. Power to maintain a local index.

(2) LOCAL AUTHORITIES' FUNCTIONS

(i) Local Indexes

322. Power to maintain a local index.

A council¹ has power to maintain an index of local charities² or of any class of local charities in its area, and to publish information contained in the index or summaries or extracts from it³. Where any of a council's functions are carried out by a joint board, the board has the same powers as the council as respects local charities in the area which are established for purposes similar or complementary to those of the board⁴. A council may employ a voluntary organisation⁵ as its agent for these purposes, on such terms and within such limits or in such cases as they may agree⁶.

1 The council referred to in the Charities Act 1993 ss 76, 77 is a county, or county borough, or district or London borough council, or the Common Council of the City of London: ss 76(1), 77(1) (both amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 101). As to such councils see further **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. The references to 'council' in the Charities Act 1993 ss 76-78 have effect as if the references to a council for any area included references to a national park authority and as if the relevant park were the authority's area: Environment Act 1995 s 70, Sch 9 para 15. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 As to the meaning of 'local charity' see PARA 187 note 10.

3 See the Charities Act 1993 s 76(1). Certain functions of a local authority in England and Wales carried out under s 76 fall within the remit of the Local Better Regulation Office: see the Regulatory Enforcement and Sanctions Act 2008 ss 4-10, Sch 3; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 733-737.

4 Charities Act 1993 s 76(5).

5 'Voluntary organisation' means any body whose activities are carried on otherwise than for profit, not being a public or local authority: Charities Act 1993 s 76(4).

6 Charities Act 1993 s 76(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(2) LOCAL AUTHORITIES' FUNCTIONS/(i) Local Indexes/323. The index and its contents.

323. The index and its contents.

The Charity Commission¹ must, on request, supply free of charge to a council² proposing to establish or maintaining an index of local charities, copies of any entries in the central register of charities relevant to the index, and particulars of any changes in entries of which copies have already been supplied; it may also arrange to supply particulars of such changes without further request³.

An index maintained under these powers is required to be open to public inspection at all reasonable times⁴.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'council' see PARA 322 note 1.

3 See the Charities Act 1993 s 76(2) (amended by the Charities Act 2006 Sch 8 para 159).

4 Charities Act 1993 s 76(3). Certain functions of a local authority in England and Wales carried out under s 76 fall within the remit of the Local Better Regulation Office: see the Regulatory Enforcement and Sanctions Act 2008 ss 4-10, Sch 3; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 733-737.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(2) LOCAL AUTHORITIES' FUNCTIONS/(ii) Review of Local Charities/324. Power to carry out reviews.

(ii) Review of Local Charities

324. Power to carry out reviews.

A council¹ has power to initiate and carry out, in co-operation with the charity trustees², a review of the working of any group of local charities with the same or similar purposes in the council's area³. It may make to the Charity Commission⁴ such report on the review and recommendations arising from it as the council, after consultation with the charity trustees, thinks fit⁵. It may also co-operate with other persons in a review of the working of local charities in its area, with or without other charities, or join with other persons in initiating and carrying out such a review⁶. The ancillary powers and provisions which exist in relation to the maintaining of local indexes⁷ apply also to local reviews⁸.

- 1 As to the meaning of 'council' see PARA 322 note 1.
- 2 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 3 Charities Act 1993 s 77(1) (amended by the Charities Act 2006 Sch 8 para 160). Certain functions of a local authority in England and Wales carried out under the Charities Act 1993s 77 fall within the remit of the Local Better Regulation Office: see the Regulatory Enforcement and Sanctions Act 2008 ss 4-10, Sch 3; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 733-737.
- 4 As to the Charity Commission see PARAS 538-572.
- 5 Charities Act 1993 s 77(1) (as amended: see note 3)
- 6 Charities Act 1993 s 77(2).
- 7 Ie as to the employment of voluntary organisations (ie the Charities Act 1993 s 76(4): see PARA 322) and the powers of joint boards (ie s 76(5): see PARA 322).
- 8 Charities Act 1993 s 77(5).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(2) LOCAL AUTHORITIES' FUNCTIONS/(ii) Review of Local Charities/325. Scope of reviews.

325. Scope of reviews.

Reviews of local charities initiated under the Charities Act 1993¹ may not extend to any ecclesiastical charity², and may not extend to any charity without the consent of the charity trustees³. Reviews initiated by a district council may not extend to the working in any county of a local charity established for purposes similar or complementary to any services provided by county councils, unless the county council consents to the review's being so extended⁴.

- 1 Ie under the Charities Act 1993 s 77: see PARA 324.
- 2 As to the meaning of 'ecclesiastical charity' see PARA 264 note 4.
- 3 See the Charities Act 1993 s 77(3). As to the meaning of 'charity trustees' see PARA 1 note 10.
- 4 See the Charities Act 1993 s 77(4). Section 77(4) does not apply to Wales: s 77(4A) (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 101). Certain functions of a local authority in England and Wales carried out under the Charities Act 1993 s 77 fall within the remit of the Local Better Regulation Office: see the Regulatory Enforcement and Sanctions Act 2008 ss 4-10, Sch 3; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 733-737.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/7. CHARITY REGISTRATION; LOCAL AUTHORITY FUNCTIONS/(2) LOCAL AUTHORITIES' FUNCTIONS/(iii) Co-operation with and between Charities/326. Local authorities' powers.

(iii) Co-operation with and between Charities

326. Local authorities' powers.

Any local council¹ or joint board discharging the functions of such a council may make arrangements with any charity established for purposes similar or complementary to services

provided by the council or board for co-ordinating the activities of the council or board with those of the charity in the interests of persons who may benefit from those services or from the charity². Whether or not such arrangements have been made with such a charity, it may also disclose to the charity, in the interests of those persons, information obtained in connection with the services provided by the council or board³.

1 In this context, 'local council' means, in relation to England, the council of a county, district, London borough, parish, and includes also the Common Council of the City of London and the Council of the Isles of Scilly, and in relation to Wales means the council of a county, county borough or community: Charities Act 1993 s 78(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 101). As to such councils see generally **LOCAL GOVERNMENT** vol 69 (2009) PARA 27 et seq. Certain functions of a local authority in England and Wales carried out under the Charities Act 1993 s 76 fall within the remit of the Local Better Regulation Office: see the Regulatory Enforcement and Sanctions Act 2008 ss 4-10, Sch 3; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 733-737.

2 Charities Act 1993 s 78(1)(a).

3 Charities Act 1993 s 78(1)(b).

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327. Charity trustees' powers.

Notwithstanding anything in the trusts¹ of a charity, where it appears to charity trustees² likely to promote or make more effective the work of the charity, they may co-operate in any review³ of the working of charities or any class of charities⁴, or make arrangements with a local authority⁵ or with another charity for co-ordinating their activities with those of the authority or of the other charity⁶, or publish information of other charities with a view to bringing them to the notice of those for whose benefit they are intended⁷. They may also defray the expense of doing any of those things out of any income or money applicable as income of the charity⁸.

1 As to the meaning of 'trusts' see PARA 217 note 5.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 Ie whether or not initiated under the Charities Act 1993 s 77: see PARAS 324-325.

4 Charities Act 1993 s 78(2)(a).

5 Ie acting under the Charities Act 1993 s 78(1): see PARA 326. Certain functions of a local authority in England and Wales carried out under s 78 fall within the remit of the Local Better Regulation Office: see the Regulatory Enforcement and Sanctions Act 2008 ss 4-10, Sch 3; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 733-737.

6 Charities Act 1993 s 78(2)(b).

7 Charities Act 1993 s 78(2)(c).

8 Charities Act 1993 s 78(2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(1) DUTIES OF CHARITY TRUSTEES/(i) In general/328. Observance of the trust.

8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS

(1) DUTIES OF CHARITY TRUSTEES

(i) In general

328. Observance of the trust.

The duties of trustees of charitable trusts do not differ in principle from those of non-charitable trustees¹. Their primary duty is to execute the trust in accordance with its terms, whether contained in a will, a deed, a scheme or any other instrument, and with the general law, in the interests of the intended beneficiaries².

It is a breach of trust for trustees to divert a charitable fund given for one object to another not contemplated by the donor³, or for a trustee of more than one charity to mix the funds and apply them indiscriminately for the charities⁴, or for trustees to vary the specific mode of application directed by the founder⁵, or for the trustees of one charity to subscribe its funds to the funds of another charity unless the recipient charity is expressly or by implication a purpose or object of the donor charity⁶. If capital has been applied for income purposes, it should if possible be replaced out of future income⁷.

It is a breach of trust to extend the benefits of a charity intended exclusively for members of one religion or sect to persons holding different religious beliefs⁸. If, but only if, an intention to that effect is expressed, this rule applies equally in the case of charities not established for purely religious purposes⁹.

Chapels established for particular forms of worship or doctrinal teaching must not be converted by the trustees to other forms¹⁰, even with the consent of the congregation¹¹. However, congregations of the same sect may differ upon non-fundamental¹² doctrines, and yet remain proper objects of the same charity¹³.

Although it is a breach of trust to alter or depart from the trusts of the foundation, it is competent for a congregation, or the majority if power is given to it, to make new regulations in matters not involving a contravention of the trusts, or to alter those in existence¹⁴.

However, a charitable trust will be construed liberally, and an expenditure may be allowed which is not within a narrow reading of the words declaring the trust¹⁵. Thus, where a charity was established for the benefit of a guild and its poor brethren, the trustees committed no breach of trust by subscribing out of the trust fund towards the erection of a school in return for a right to have a number of boys educated there gratuitously¹⁶.

Where a trustee of charity property inadvertently pays more than the income of the property to the charity, he has no claim against the charity for reimbursement¹⁷.

Charities¹⁸ are not permitted to spend money applicable for the purposes of the charity in promoting or preparing a Bill in Parliament, without the consent of the court or of the Charity Commission¹⁹.

Charity trustees have statutory power to do various things to promote the work of the charity, notwithstanding the terms of the trusts of the charity²⁰, but a charity has no power to give a gratuitous guarantee in respect of the liability of a third party with whom it has no legal tie²¹.

1 These include, eg, the duty not to deviate from the terms of the trust, not to profit from the trust, not to delegate the trust, to act impartially between the beneficiaries, to distribute the trust property only to those properly entitled, and to invest prudently: see **TRUSTS** vol 48 (2007 Reissue) PARA 947 et seq. As to the duty to act gratuitously and the position regarding the remuneration of charity trustees see PARA 332.

2 See *Andrews v M'Guffog* (1886) 11 App Cas 313 at 329, HL, per Lord Herschell LC. Trustees are also subject to a statutory duty of care: see the Trustee Act 2000 ss 1, 2, Sch 1; PARA 334; and **TRUSTS** vol 48 (2007 Reissue) PARAS 949-950.

3 *A-G v Brandreth* (1842) 1 Y & C Ch Cas 200 (where a gift for the poor of one parish was wrongfully applied in aid of the poor of another parish); *Re St John the Evangelist, D'Aungre's Charity* (1888) 59 LT 617 (where funds given for the repair of one church were applied for another). See also *Wivelescom Case* (1629) Duke 94; *A-G v Vivian* (1826) 1 Russ 226; *A-G v Goldsmith's Co* (1833) Coop Pr Cas 292 at 309 per Leach MR; *Re Church Estate Charity, Wandsworth* (1871) 6 Ch App 296. As to the effect of a union of benefices upon charities connected with one of the united parishes or churches see PARA 266. A church in the City of London which becomes a guild church retains the benefit of a charity enjoyed by the church: see the City of London (Guild Churches) Act 1952 s 28.

4 *A-G v Newbury Corpn* (1838) Coop Pr Cas 72 at 77 per Lord Brougham LC; *Andrews v M'Guffog* (1886) 11 App Cas 313, HL. The rule is different where one fund is given for several charities: *A-G v Geary* (1817) 3 Mer 513.

5 Eg a gift for the benefit of decayed householders cannot be applied for the poor of the parish generally: *Ex p Fowlser* (1819) 1 Jac & W 70. Nor can a fund to provide a preacher be applied in aid of the poor (Duke on Charitable Uses 116), or property devised to discharge a tax be diverted to the use of certain poor persons (*A-G v Bushby* (1857) 24 Beav 299), or a grammar school, founded for classical teaching, be used for instruction in English, writing and arithmetic, or its surplus revenue be applied for enlarging the school chapel for the town use (*A-G v Earl of Mansfield* (1827) 2 Russ 501).

6 *Baldry v Feintuck* [1972] 2 All ER 81, [1972] 1 WLR 552.

7 *Andrews v M'Guffog* (1886) 11 App Cas 313 at 329, HL, per Lord Herschell LC.

8 *Shore v Wilson* (1842) 9 Cl & Fin 355, HL; *A-G v Calvert* (1857) 23 Beav 248 (charity restricted to members of Church of England). See also *Baker v Lee* (1860) 8 HL Cas 495 (non-eligibility of dissenters as trustees of Church of England charity); *A-G v Murdoch* (1852) 1 De GM & G 86; *A-G v Anderson* (1888) 57 LJCh 543 at 550 per Kekewich J (charities confined to Protestant dissenters and Presbyterians); *Drummond v A-G for Ireland* (1849) 2 HL Cas 837 (Unitarians excluded).

9 *A-G v Calvert* (1857) 26 LJCh 682 at 686 per Romilly MR; *Re Perry Almshouses, Re Ross' Charity* [1899] 1 Ch 21, CA.

10 *Craigdallie v Aikman* (1813) 1 Dow 1; *A-G v Pearson* (1817) 3 Mer 353 at 400, 418-419 per Lord Eldon LC; *Foley v Wonthner* (1820) 2 Jac & W 245 at 247 per Lord Eldon LC; *Dill v Watson* (1836) 2 Jo Ex Ir 48; *Milligan v Mitchell* (1837) 3 My & Cr 72; *A-G v Munro* (1848) 2 De G & Sm 122; *A-G v Wilson* (1848) 16 Sim 210; *General Assembly of the Free Church of Scotland v Lord Overtoun, Macalister v Young* [1904] AC 515 at 613 et seq, HL, per Earl of Halsbury LC. But see *Westwood v McKie* (1869) 21 LT 165.

11 *Broom v Summers* (1840) 11 Sim 353; *A-G v Welsh* (1844) 4 Hare 572; *A-G v Murdoch* (1852) 1 De GM & G 86; *A-G v Rochester Corpn* (1854) 5 De GM & G 797; *Ward v Hipwell* (1862) 3 Giff 547; *A-G v Aust* (1865) 13 LT 235; and see *A-G v Anderson* (1888) 57 LJCh 543. As to the effect of acquiescence in a change of doctrine see *Cairncross v Lorimer* (1860) 3 Macq 827, HL.

12 It is for the court, not for the trustees, to decide what doctrines are fundamental and must be held by congregations to entitle them to participate in a charity: *Newsome v Flowers* (1861) 30 Beav 461.

13 *A-G v Gould* (1860) 28 Beav 485; *A-G v Etheridge* (1862) 32 LJCh 161 (cases relating to the doctrines of strict or free communion, both being admissible among the sect of Particular Baptists).

14 *Milligan v Mitchell* (1837) 3 My & Cr 72; *A-G v Murdoch* (1852) 1 De GM & G 86; *A-G v Gould* (1860) 28 Beav 485; *A-G v Anderson* (1888) 57 LJCh 543 at 549 per Kekewich J.

15 *A-G v Stamford Corpn* (1747) 2 Swan 591; *Wilkinson v Malin* (1832) 2 Tyr 544 at 570 per Lord Lyndhurst CB; *A-G v Foyster* (1794) 1 Anst 116 at 122 per Eyre CB.

16 *Anderson v Wrights of Glasgow* (1865) 12 LT 805, HL.

17 *A-G v Gibbs* (1847) 1 De G & Sm 156 at 160 per Knight Bruce V-C; affd 2 Ph 327.

18 Until a day to be appointed this excludes exempt charities: see the Charities Act 1993 s 17(7) (prospectively amended by the Charities Act 2006 Sch 5 para 5, Sch 9). As to exempt charities see PARA 315. At the date at which this volume states the law no such day had been appointed.

19 See the Charities Act 1993 s 17(7) (amended by the Charities Act 2006 Sch 8 para 110(6)). For an example of the application of what is now the Charities Act 1993 s 17(7) see the *Report of the Charity Commissioners for England and Wales for 1986* (HC Paper (1986-87) no 306) App D. As to the Charity Commission see PARAS 538-572.

20 See the Charities Act 1993 s 78(2); and PARA 327.

21 *Rosemary Simmons Memorial Housing Association Ltd v United Dominions Trust Ltd (Bates & Partners (a firm), third party)* [1987] 1 All ER 281, [1986] 1 WLR 1440.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(1) DUTIES OF CHARITY TRUSTEES/(i) In general/329. Duty towards the trust property.

329. Duty towards the trust property.

It is the duty of charity trustees to protect the trust property¹, but they are not bound to look with more prudence to the affairs of the charity than to their own².

The deliberate destruction of charity property by trustees is a gross breach of trust³.

1 See **TRUSTS** vol 48 (2007 Reissue) PARAS 959-960. Thus, for example, it would be a breach of trust for trustees to alienate trust property improperly (*A-G v East Retford Corpn* (1833) 2 My & K 35; revsd (1838) 3 My & Cr 484), or negligently to permit others to appropriate it (*A-G v Leicester Corpn* (1844) 7 Beav 176). In particular they must reduce the property into possession and invest it properly in authorised investments: see PARA 416 et seq; and **TRUSTS** vol 48 (2007 Reissue) PARAS 968-970.

2 *A-G v Dixie, ex p Bosworth School* (1805) 13 Ves 519 at 534 per Lord Eldon LC; *Learoyd v Whiteley* (1887) 12 App Cas 727 at 733, HL, per Lord Halsbury LC. But see *A-G v Kerr* (1840) 2 Beav 420 at 428 per Lord Langdale MR.

3 *Ex p Greenhouse* (1815) 1 Madd 92 at 108 per Plumer V-C, where the trustees of a chapel pulled it down.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(1) DUTIES OF CHARITY TRUSTEES/(i) In general/330. Duty towards beneficiaries.

330. Duty towards beneficiaries.

It is improper for a trustee holding property subject to charitable trusts to retain the fund without taking any steps to apply the property for charity¹.

Where there is a temporary or permanent failure of the particular object of the charitable trust, the trustee may not merely retain the property for himself².

1 *A-G v Alford* (1855) 4 De GM & G 843 at 852 per Lord Cranworth LC.

2 *Aylet v Dodd* (1741) 2 Atk 238; *Incorporated Society v Price* (1844) 1 Jo & Lat 498 at 500 per Lord Sugden LC (trust to pay schoolmasters' salaries and maintain schools; schools discontinued): *A-G v Cambridge Corpn* (1836) 5 LJCh 357; *A-G v Bolton* (1796) 3 Anst 820; *A-G v West* (1858) 27 LJCh 789.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(1) DUTIES OF CHARITY TRUSTEES/(i) In general/331. Duty to apply for scheme.

331. Duty to apply for scheme.

If there is a failure of the objects of the trust, or if for any other reason the statutory conditions for a cy-près application are satisfied, the trustees are under a duty to secure the effective use of the charity property by taking steps to enable it to be applied cy-près¹. Similarly, if there is some difficulty of administration, the trustees should apply to the Charity Commission² or to the court for directions.

1 See the Charities Act 1993 s 13(5); and PARA 211. The usual procedure is to apply to the Charity Commission for a scheme under s 16 or s 17: see PARA 187 et seq. As to cy-près schemes see PARA 208 et seq. In rare cases it may be proper to apply to the court, but the leave of the Commission is required: see PARA 588. Trustees may not apply the trust property cy-près on their own initiative: see PARA 211. As to the Charity Commission see PARAS 538-572.

2 As to the direction of schemes see PARA 177 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(1) DUTIES OF CHARITY TRUSTEES/(i) In general/332. Remuneration.

332. Remuneration.

The equitable rule precluding private trustees from drawing remuneration for their services¹ may be overridden by express provision allowing remuneration². Such an express provision will be strictly construed³. The same principle with regard to express provisions applies in the case of charitable trusts, but provision is made to deal with the remuneration of charity trustees in the absence of any such provision in the trusts of the charity⁴. The provision applies to remuneration for services⁵ provided by a person to or on behalf of a charity where he is a charity trustee, a trustee for the charity, or a person connected with the same⁶ and the remuneration might result in that trustee obtaining any benefit⁷.

The person is entitled to receive the remuneration out of the funds of the charity if the following conditions are met⁸. The conditions are: (1) the amount or maximum amount⁹ of the remuneration must be set out in an agreement in writing between the charity or its charity trustees, as the case may be, and the relevant person, under which the relevant person is to provide the services in question to or on behalf of the charity¹⁰; (2) the amount or maximum amount of remuneration must not exceed what is reasonable in the circumstances for the provision by that person of the services in question¹¹; (3) before entering into that agreement, the charity trustees must have decided that they were satisfied that it is in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement¹²; (4) where, immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is: (a) a person in respect of whom such a remuneration agreement is in force, (b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or (c) a person connected with a person falling within head (a) or (b), then the total number of them must constitute a minority of the persons for the time being holding office as charity trustees of the charity¹³; and (5) the trusts of the charity must not contain any express provision that prohibits the relevant person from receiving the remuneration¹⁴.

Before entering into such an agreement¹⁵, the charity trustees must have regard to any guidance given by the Charity Commission concerning the making of such arrangements¹⁶.

General provision is made to deal with the remuneration of professional trustees where there is an express provision in the trust instrument entitling him to receive payment out of the trust funds in respect of services provided by him to or on behalf of the trust¹⁷ and where there is no such express provision¹⁸. The Secretary of State¹⁹ may by regulations²⁰ make provision for the remuneration of trustees of charitable trusts²¹ who are trust corporations²² or act in a professional capacity²³. This power includes power to make provision for the remuneration of a trustee who has been authorised²⁴ to exercise functions²⁵ as an agent of the trustees or to act as a nominee or custodian²⁶.

1 See *Brocksopp v Barnes* (1820) 5 Madd 90; *Barrett v Hartley* (1866) LR 2 Eq 789; and **TRUSTS** vol 48 (2007 Reissue) PARA 930.

2 See *Willis v Kibble* (1839) 1 Beav 559; and **TRUSTS** vol 48 (2007 Reissue) PARA 930.

3 *Re Gee (decd)*, *Wood v Staples* [1948] Ch 284, [1948] 1 All ER 498.

4 See the Charities Act 1993 s 73A(1) (ss 73A, 73B added by the Charities Act 2006 s 36). These provisions do not affect the payment of remuneration or provision of services in accordance with an agreement made before 18 March 2008 (Sch 10 para 12); nor do they apply to any remuneration for services provided by a person in his capacity as a charity trustee or trustee for a charity or under a contract of employment or any other remuneration which a person is entitled to receive out of the funds of a charity by virtue of any provision contained in the trusts of the charity, any order of the court or the Charity Commission or any statutory provision under another Act of Parliament (Charities Act 1993 s 73A(7)-(8) (as so added)). 'Remuneration' for these purposes includes any benefit in kind: ss 73A(9), 73B(4) (as so added). As to the Charity Commission see PARAS 538-572. As to the meaning of 'charity trustees' see PARA 1 note 10.

5 'Services' for these purposes includes goods that are supplied in connection with the provision of services: Charities Act 1993 ss 73A(9), 73B(4) (as added: see note 4).

6 For the purposes of these provisions, the following persons are 'connected' with a charity trustee or trustee for a charity: (1) a child, parent, grandchild, grandparent, brother or sister of the trustee; (2) the spouse or civil partner of the trustee or of any person falling within head (1) above; (3) a person carrying on business in partnership with the trustee or with any person falling within head (1) or head (2); (4) an institution which is controlled by the trustee or by any person falling within head (1), (2) or (3), or by two or more such persons, when taken together; and (5) a body corporate in which the trustee or any connected person falling within heads (1)-(3) has a substantial interest, or two or more such persons falling, when taken together, have a substantial interest: Charities Act 1993 ss 73A(9), 73B(5) (as added: see note 4). The provisions in Sch 5 paras 2-4 (see PARA 395) apply for the purposes of s 73B(5): s 73B(6) (as so added).

7 Charities Act 1993 s 73A(1) (as added: see note 4). 'Benefit' means a direct or indirect benefit of any nature: ss 73A(9), 73B(4) (as so added).

8 See the Charities Act 1993 s 73A(2) (as added: see note 4).

9 'Maximum amount' in relation to remuneration means the maximum amount of remuneration whether specified in or ascertainably under the terms of the agreement in question, and 'amount' includes monetary value: Charities Act 1993 ss 73A(9), 73B(4) (as added: see note 4).

10 Charities Act 1993 s 73A(3)(a) (as added: see note 4).

11 Charities Act 1993 s 73A(3)(b) (as added: see note 4).

12 Charities Act 1993 s 73A(4) (as added: see note 4). The statutory duty of care in the Trustee Act 2000 s 1(1) (see **TRUSTS**) applies to a charity trustee when making such a decision: ss 73A(9), 73B(2) (as so added). As to the statutory duty of care see PARA 334.

13 Charities Act 1993 s 73A(5) (as added: see note 4). Such an agreement is in force so long as any obligations under the agreement have not been fully discharged by a party to it: ss 73A(9), 73B(3) (as so added).

- 14 Charities Act 1993 s 73A(6) (as added: see note 4).
- 15 le an agreement within the Charities Act 1993 s 73A(3).
- 16 Charities Act 1993 ss 73A(9), 73B(1) (as added: see note 4). As to the Charity Commission see PARAS 538-572. As to guidance issued by the Charity Commission see PARA 542.
- 17 See the Trustee Act 2000 s 28; and **TRUSTS** vol 48 (2007 Reissue) PARA 931.
- 18 See the Trustee Act 2000 s 29; and **TRUSTS** vol 48 (2007 Reissue) PARA 932.
- 19 As to the Secretary of State see PARA 579.
- 20 Regulations made under the Trustee Act 2000 s 30 may make different provision for different cases, and may contain such supplemental, incidental, consequential and transitional provisions as the Secretary of State considers appropriate: s 30(3). The power to make regulations under s 30 is exercisable by statutory instrument: s 30(4). At the date at which this volume states the law no such regulations had been made.
- 21 'Charitable trust' means a trust under which property is held for charitable purposes: s 39(1). As to the meaning of 'charitable purposes' see para 2; definition applied by s 39(1).
- 22 'Trust corporation' has the same meaning as in the Trustee Act 1925 (see **TRUSTS** vol 48 (2007 Reissue) PARA 798); Trustee Act 2000 s 39(1).
- 23 Trustee Act 2000 s 30(1). For these purposes, a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with: (1) the management or administration of trusts generally or a particular kind of trust; or (2) any particular aspect of the management or administration of trusts generally or a particular kind of trust, and the services he provides to or on behalf of the trust fall within that description: ss 28(5), 39(2).
- 24 le under a power conferred by Trustee Act 2000 Pt IV (ss 11-27) (see **TRUSTS** vol 48 (2007 Reissue) PARA 988 et seq) or any other enactment or any provision of subordinate legislation, or by the trust instrument.
- 25 'Functions' includes powers and duties: Trustee Act 2000 s 39(2).
- 26 Trustee Act 2000 s 30(2). A person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any documents or records concerning the assets: ss 17(2), 39(2). As to the remuneration of agents nominees and custodians see **TRUSTS** vol 48 (2007 Reissue) PARA 903.

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333. Disqualification of trustee receiving remuneration.

Where any charity trustee¹ or trustee for a charity is or would be entitled to remuneration² under an agreement or proposed agreement within the relevant statutory provision³, or is connected with a person who is or would be so entitled⁴, then that trustee is disqualified from acting as such in relation to any decision or other matter connected with the agreement⁵, though any act done by such a person which he is so disqualified is not invalid by reason only of that disqualification⁶.

If the Commission is satisfied that such a disqualified trustee has done any act which he was so disqualified and he, or a person connected with him, has received or is to receive from the charity any remuneration under the agreement in question, it may make an order, as appropriate⁷: (1) requiring the disqualified trustee to reimburse to the charity the whole or part of the remuneration so received⁸; (2) to the extent that the remuneration consists of a benefit⁹ in kind, requiring the disqualified trustee to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind¹⁰; (3) directing that the disqualified trustee or, as the case may be, connected person is not to be paid the whole or part of the remuneration under the agreement in question¹¹.

If the Commission makes any such order, the disqualified trustee or, as the case may be, connected person accordingly ceases to have any entitlement under the agreement to so much of the remuneration, or its monetary value, as the order requires him to reimburse to the charity or, as the case may be, as it directs is not to be paid to him¹².

An appeal against such an order¹³ of the Commission requiring a trustee or connected person to repay, or not to receive, remuneration lies to the Tribunal¹⁴ at the instance of the Attorney General, the trustee or connected person, the other charity trustees of the charity concerned and any other person who is or may be affected by the order¹⁵. The Tribunal may do any of the following: (a) quash the order and, if appropriate remit the matter to the Commission; (b) substitute for the order any other order which could have been made by the Commission¹⁶.

1 As to the meaning of 'charity trustee' see PARA 1 note 10.

2 As to the meaning of 'remuneration' see the Charities Act 1993 s 73B(4); and PARA 332 note 4 (definition applied by s 73C(8) (added by the Charities Act 2006 s 37)).

3 Ie under an agreement or proposed agreement within the Charities Act 1993 s 73A(3) (see PARA 332).

4 Charities Act 1993 s 73C(1) (as added: see note 2). As to the meaning of 'connected persons' see PARA 332 note 6 (definition applied by s 73C(8) (as so added)).

5 Charities Act 1993 s 73C(2) (as added: see note 2).

6 Charities Act 1993 s 73C(3) (as added: see note 2).

7 Charities Act 1993 s 73C(4) (as added: see note 2).

8 Charities Act 1993 s 73C(5)(a) (as added: see note 2).

9 As to the meaning of 'benefit' see the Charities Act 1993; and PARA 332 note 7 (definition applied by s 73C(8) (as added: see note 2)).

10 Charities Act 1993 s 73C(5)(b) (as added: see note 2).

11 Charities Act 1993 s 73C(6) (as added: see note 2).

12 Charities Act 1993 s 73C(7) (as added: see note 2).

13 Ie an order under the Charities Act 1993 s 73C(5) or (6).

14 As to the Tribunal see PARA 573 et seq.

15 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

16 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 15).

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334. Statutory duty of care under the Trustee Act 2000.

Trustees are subject to a statutory duty of care¹ in certain circumstances² in relation to: (1) investment³; (2) the acquisition of land⁴; (3) agents, nominees and custodians⁵; (4) the compounding of liabilities⁶; (5) insurance⁷; (6) reversionary interests, valuations and audit⁸. The duty of care does not apply if or in so far as it appears from the trust instrument that the duty is not meant to apply⁹.

The duty of care required of a trustee is to exercise such care and skill as is reasonable in the circumstances having regard in particular to any special knowledge or experience that he has or holds himself out as having and, if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession¹⁰.

1 See the Trustee Act 2000 ss 1(1), (2), 39(2); and **TRUSTS** vol 48 (2007 Reissue) PARA 949. The new duty does not, however, alter the principles relating to the exercise of discretionary powers by trustees. As to the exercise of discretionary powers see **TRUSTS** vol 48 (2007 Reissue) PARA 971.

2 See the Trustee Act 2000 s 2, Sch 1; and **TRUSTS** vol 48 (2007 Reissue) PARA 950.

3 See the Trustee Act 2000 Sch 1 para 1. As to the power to invest see PARA 416 et seq; and **TRUSTS** vol 48 (2007 Reissue) PARA 1005 et seq.

4 See the Trustee Act 2000 Sch 1 para 2; and **TRUSTS** vol 48 (2007 Reissue) PARA 950, 1034.

5 See the Trustee Act 2000 Sch 1 para 3. As to the power to delegate and employ agents see **TRUSTS** vol 48 (2007 Reissue) PARA 984 et seq.

6 See the Trustee Act 2000 Sch 1 para 4.

7 See Trustee Act 2000 Sch 1 para 5. As to the power to insure see **TRUSTS** vol 48 (2007 Reissue) PARAS 1046-1048 et seq.

8 See the Trustee Act 2000 Sch 1 para 6.

9 See the Trustee Act 2000 Sch 1 para 7.

10 See the Trustee Act 2000 ss 1(1), (2), 39(2); and **TRUSTS** vol 48 (2007 Reissue) PARA 949.

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(ii) Accounts

A. ACCOUNTING RECORDS

335. Duty to keep accounting records.

The charity trustees¹ of a charity², other than an exempt charity³ and a charity which is a company⁴, must ensure that accounting records are kept which are sufficient to show and explain all the charity's transactions, and which are such as to⁵: (1) disclose at any time, with reasonable accuracy, the financial position of the charity at that time⁶; and (2) enable the trustees to ensure that where any annual statements of account are prepared by them⁷, those statements comply with the statutory requirements⁸. In particular they must contain entries showing from day to day all sums of money received and expended by the charity and the matters in respect of which the receipt and expenditure takes place, and a record of the assets and liabilities of the charity⁹. The charity trustees of a charity must preserve any accounting records made for these purposes for at least six years from the end of the financial year¹⁰ of the charity in which they are made¹¹.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 As to the meaning of 'charity' see PARA 1.

3 See the Charities Act 1993 s 46(1); and PARA 375. As to exempt charities see PARA 315. As to the duty of charity trustees of an exempt charity see PARA 375.

4 Charities Act 1993 s 41(5). As to the meaning of 'company' see PARA 227.

5 Charities Act 1993 s 41(1).

6 Charities Act 1993 s 41(1)(a).

7 ie under the Charities Act 1993 s 42(1): see PARA 336.

8 Charities Act 1993 s 41(1)(b). As to the statutory requirements see s 42(1) and the regulations made under it: see PARA 336.

9 Charities Act 1993 s 41(2).

10 As to the meaning of 'financial year' see PARA 217 note 3; and PARA 338.

11 Charities Act 1993 s 41(3). Where a charity ceases to exist within the six year period, the obligation to preserve the records continues to be discharged by the last charity trustees of the charity, unless the Charity Commission consents in writing to the records being destroyed or otherwise disposed of: s 41(4) (amended by the Charities Act 2006 Sch 8 para 132). As to the Charity Commission see PARAS 538-572.

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B. ANNUAL STATEMENTS OF ACCOUNTS

336. Annual statement of accounts.

The charity trustees¹ of a charity², other than an exempt charity³ and a charity which is a company⁴, must prepare in respect of each financial year⁵ of the charity a statement of accounts complying with such requirements as to its form and contents as may be prescribed by the regulations⁶ made by the Minister⁷. However, where a charity's gross income⁸ in any financial year does not exceed £250,000⁹, the charity trustees may, in respect of that year, elect to prepare a receipts and payments account, and a statement of assets and liabilities instead of a statement of accounts¹⁰. The charity trustees of a charity must preserve any statement of accounts¹¹, or any account and statement¹², for at least six years from the end of the financial year to which any such statement relates or, as the case may be, to which any such account and statement relate¹³.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 As to the meaning of 'charity' see PARA 1.

3 See the Charities Act 1993 s 46(1). As to exempt charities see PARA 315. As to the duty of charity trustees of an exempt charity see PARA 375.

4 Charities Act 1993 s 42(7). As to the meaning of 'company' see PARA 227. As to charities which are companies see ss 63-69; and PARAS 236.

5 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

6 In respect of a financial year beginning on or after 1 April 2008, such regulations must not impose on the charity trustees of a charity that is a charitable trust created by any person (the 'settlor') any requirement to disclose, in any statement of accounts prepared by them under the identities of recipients of grants made out of the funds of the charity, or the amounts of any individual grants so made, if the disclosure would fall to be made at a time when the settlor or any spouse or civil partner of his was still alive: Charities Act 1993 s 42(2A) (added by the Charities Act 2006 Sch 8 para 133(2)).

In the exercise of the power conferred under the Charities Act 1993 s 42, the Charities (Accounts and Reports) Regulations 1995, SI 1995/2724 (revoked); the Charities (Accounts and Reports) Regulations 2000, SI 2000/2868 (revoked); the Charities (Accounts and Reports) Regulations 2005, SI 2005/572 (revoked); and the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, have been made. See PARA 338 et seq.

The Charities (Accounts and Reports) Regulations 2008, SI 2008/629, apply in respect of a financial year of a charity which begins on or after 1 April 2008, or, in the case of year which began before this date, a financial year in respect of which the charity trustees may make and make an accounts determination: reg 4(4), (6)(d). Such a determination may not be made if the charity is a special case charity, or if before 1 April 2008 they have approved the accounts of the charity prepared in respect of that financial year or authorised the signature of an annual report prepared in respect of that financial year in accordance with the Charities (Accounts and Reports) Regulations 2005, SI 2005/572: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(7). As to the meaning of 'special case charity' see PARA 341 note 3.

Otherwise, the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, continue to apply in respect of a financial year of a charity which began before 1 April 2008 (save that an auditor's duty under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 7(5) applies only in respect of matters of which an auditor became aware of before 1 April 2008 and during a financial year ending on or before 31 March 2008): see reg 4(2)-(4).

7 Charities Act 1993 s 42(1) (amended by SI 2006/2951). Before making any regulations under the Charities Act 1993 s 42 the Minister must consult such persons or bodies or persons as he considers appropriate: s 86(4) (amended by SI 2006/2951). As to the making of regulations generally see the Charities Act 1993 s 86; and PARA 584. See also PARA 312 note 6. The regulations may make provision for the statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations, and as to any information to be provided by way of notes to the accounts: s 42(2). The regulations may also make provision for determining the financial years of a charity for the purposes of the Charities Act 1993 and any regulations made under it: s 42(2). As to the Minister see PARA 580. The duties of an auditor carrying out an audit of the accounts of a charity are, in the case of an audit carried out under s 43, specified where the auditor is carrying out an audit of a statement of accounts prepared under s 42(1), under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24 (see PARA 356): reg 20.

8 As to the meaning of 'gross income' see PARA 217 note 2.

9 The Minister may by order amend the specified sum: Charities Act 1993 s 42(6) (amended by SI 2006/2951). In the exercise of this power, the Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009, SI 2009/508, has been made. See also note 7.

10 Charities Act 1993 s 42(3) (amended by SI 2009/508). If the requirement to prepare group accounts applies to the charity trustees of a parent charity in relation to a financial year, the option of preparing these alternative documents is not available in relation to that year whatever the amount of the charity's gross income: Charities Act 1993 s 49A, Sch 5A para 3(6)(b) (added by the Charities Act 2006 s 30, Sch 6). As to group accounts see PARA 337. As to the meaning of 'parent charity' see PARA 337 note 2. The duties of an auditor carrying out an audit of the accounts of a charity are, in the case of an audit carried out under the Charities Act 1993 s 43, specified where the auditor is carrying out an audit of a receipts and payments account and a statement of assets and liabilities prepared under s 42(3), under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26 (see PARA 358): reg 20.

11 ie prepared by them under the Charities Act 1993 s 42(1): see the text and notes 5-7.

12 ie prepared by them under the Charities Act 1993 s 42(3): see the text and notes 8-10.

13 Charities Act 1993 s 42(4). Where a charity ceases to exist within the six year period, the obligation to preserve the statement of accounts (or account and statement) continues to be discharged by the last charity trustees of the charity, unless the Charity Commission consents in writing to their being destroyed or otherwise disposed of: ss 41(4), 42(5) (s 41(4) amended by the Charities Act 2006 Sch 8 para 132).

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337. Group accounts.

The Charities Act 1993 makes special provision for group accounts¹. These provisions apply to the preparation and auditing of accounts in respect of groups consisting of parent charities² and their subsidiary undertakings³, and other matters relating to such groups⁴, for financial years beginning on or after 1 April 2008⁵.

If a charity is a parent charity at the end of a particular financial year and, where it is a company, it is not required to prepare consolidated accounts for that year under the companies legislation⁶ (whether or not such accounts are in fact prepared), then its charity trustees must prepare group accounts in respect of that year⁷, ie consolidated accounts relating to the group and complying with such requirements as to their form and content as is prescribed in regulations made by the Minister⁸.

The charity trustees of a charity⁹ which is a parent charity or a subsidiary undertaking must ensure that the accounting records kept in respect of the charity¹⁰ not only comply with those statutory requirements but also are such as to enable the charity trustees of the parent charity to ensure that any group accounts prepared by them comply with the relevant requirements¹¹. If a parent charity has a subsidiary undertaking in relation to which those statutory accounting requirements do not apply, the charity trustees of the parent charity must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the trustees to ensure that, where any group accounts are prepared under the Charities Act 1993, those accounts comply with the relevant requirements¹².

If the requirement to prepare group accounts applies to the charity trustees of a parent charity (other than a parent charity which is a company) in relation to a financial year, then that requirement so applies in addition to the requirement to prepare a statement of account under the Charities Act 1993¹³ and the option of preparing a receipts and payments account and a statement of assets and liabilities¹⁴ is not available in relation to that year, whatever the amount of the charity's gross income for that year¹⁵. If the requirement to prepare group accounts applies to the charity trustees of a parent charity in relation to a financial year and

the charity is a company, in addition to the duty to prepare individual accounts under the companies legislation¹⁶, that requirement so applies¹⁷.

However, the duty to prepare group accounts does not apply to the charity trustees of a parent charity in relation to a financial year if at the end of that year the charity is itself a subsidiary undertaking in relation to another charity¹⁸ or if the aggregate gross income¹⁹ of the group for that year does not exceed £500,000²⁰.

A subsidiary undertaking may be excluded from the group accounts in the following circumstances: (1) where the inclusion of the subsidiary undertaking is not material for the purposes of giving a true and fair view, save that two or more subsidiary undertakings may only be so excluded²¹ if they are not material when taken together; (2) where severe long term restrictions substantially hinder the exercise of the rights of the parent charity over the assets or management of the undertaking; (3) where the information which is necessary for the preparation of the group accounts cannot be obtained without disproportionate expense or undue delay; (4) where the interest of the parent charity in the undertaking is held exclusively with a view to subsequent resale²².

The charity trustees of a charity must preserve any group accounts prepared by them under the Charities Act 1993²³ for at least six years from the end of the financial year to which the accounts relate²⁴. Where a charity ceases to exist within the six year period, the obligation to preserve the statement of accounts (or account and statement) continues to be discharged by the last charity trustees of the charity, unless the Charity Commission consents in writing to their being destroyed or otherwise disposed of²⁵.

The charity trustees of a parent charity must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with its own financial year²⁶.

1 See the Charities Act 1993 s 49A, Sch 5A; and notes 2-24.

2 A charity is a 'parent charity' if it is, or is to be treated as, a parent undertaking in relation to one or more other undertakings in accordance with the Companies Act 2006 s 1162, Sch 7 (see **COMPANIES** vol 14 (2009) PARAS 26-27): Charities Act 1993 Sch 5A para 1(2) (Sch 5A added by the Charities Act 2006 Sch 6; Charities Act 1993 Sch 5A para 1(2) substituted by SI 2008/527; and amended by SI 2008/948). 'Group', in relation to a parent charity, means that charity and its subsidiary undertaking or undertakings, and any reference to the members of the group is to be construed accordingly: Charities Act 1993 Sch 5A para 1(5) (as so added).

3 Each undertaking in relation to which a parent charity is, or is to be treated as, a parent undertaking in accordance with the Companies Act 2006 s 1162, Sch 7 (see **COMPANIES** vol 14 (2009) PARAS 26-27) is a 'subsidiary undertaking' in relation to the parent charity: Charities Act 1993 Sch 5A para 1(3) (as added: see note 2). However this does not have the result that any of the following is a 'subsidiary undertaking':

17 (1) any special trusts of a charity (Sch 5A para 1(4)(a) (as so added));

18 (2) any institution which, by virtue of a direction under s 96(5) (see PARA 545) is to be treated as forming any part of a charity for the purposes of Pt VI (Sch 5A para 1(4)(b) (as so added)); and

19 (3) any charity to which a direction under s 96(6) (see PARA 545) applies for those purposes (Sch 5A para 1(4)(c) (as so added)).

For the purposes of Sch 5A para 1 and the Companies Act 2006 s 1162 and Sch 7 'undertaking' means an undertaking as defined by s 1161(1) or a charity which is not an undertaking as so defined: Charities Act 1993 Sch 5A para 1(6), (7) (as so added).

4 See the Charities Act 1993 s 49A (added by the Charities Act 2006 s 30(1)).

5 Charities Act 2006 Sch 10 para 17.

6 I.e. under the Companies Act 2006 s 399 (see **COMPANIES** vol 15 (2009) PARA 775).

7 'Group accounts' means consolidated accounts relating to the group and complying with such regulations as to their form and contents as may be prescribed by regulations made by the Minister: Charities Act 1993 Sch 5A para 3(3) (as added: see note 2). Without prejudice to the generality of Sch 5A para 3, the Minister may by regulations provide for any such accounts to be prepared in accordance with such methods and principles as are specified or referred to in the regulations; for dealing with cases where the financial years of the members of the group do not all coincide; and as to any information to be provided by way of notes to the accounts: Sch 5A para 3(4) (as so added). Such regulations may also make provision for determining the financial years of subsidiary undertakings for the purposes of these provisions and for imposing on the charity trustees of a parent charity requirements with respect to securing that such financial years coincide with that of the charity: Sch 5A para 3(5) (as so added). As to the Minister see PARA 580. For the purposes of Sch 5A the financial years of subsidiary undertakings are to be determined in accordance with the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 10: reg 10(1). The financial year of a charitable subsidiary undertaking is to be determined in accordance with the Charities Act 1993 s 97 (see PARA 217): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 10(2). The financial year of a non-charitable subsidiary undertaking is a period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not: reg 10(3).

8 See the Charities Act 1993 Sch 5A para 3(1), (2) (Sch 5A as added (see note 2); Sch 5A para 3(1) substituted by SI 2008/527; and amended by SI 2008/948).

9 As to the meaning of 'charity trustees' see PARA 1 note 10. As to the meaning of 'charity' see PARA 1.

10 Is the charity under the Charities Act 1993 s 41(1) (see PARA 335) or as the case may be the Companies Act 2006 s 386 (see **COMPANIES** vol 15 (2009) PARA 708).

11 Charities Act 1993 Sch 5A para 2(1) (as added (see note 2); amended by SI 2008/948). The 'relevant requirements' means the requirements of regulations under Sch 5A para 3 (see notes 7-8 and 15-20): Charities Act 1993 Sch 5A para 2(3) (as so added).

12 Charities Act 1993 Sch 5A para 2(2) (as added (see note 2); amended by SI 2008/948).

13 Is under the Charities Act 1993 s 42(1): see PARA 336.

14 Is the documents mentioned in the Charities Act 1993 s 42(3): see PARA 336.

15 Charities Act 1993 Sch 5A para 3(6) (as added (see note 2); amended by SI 2008/527).

16 Is the requirement in the Companies Act 2006 s 394 (see **COMPANIES** vol 15 (2009) PARA 716).

17 Charities Act 1993 Sch 5A para 3(6A) (Sch 5A as added (see note 2); Sch 5A para 3(6A) added by SI 2008/527; and amended by SI 2008/948).

18 Charities Act 1993 Sch 5A paras 3(7), 4(1) (as added: see note 2).

19 The Minister may by regulations make provision for determining the amount of the aggregate gross income for a financial year of a group consisting of a parent charity and its subsidiary undertaking or undertakings: Charities Act 1993 Sch 5A para 15 (as added: see note 2). Accordingly the 'aggregate gross income' for a financial year of a group consisting of a parent charity and its subsidiary undertaking or undertakings is to be determined by eliminating all group transactions for that year from the group income for that year: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 9(1). 'Group income' means the aggregate of the gross income of the parent charity for the financial year, the gross income of each charitable subsidiary undertaking of that parent charity for the corresponding financial year, and the gross income of each non-charitable subsidiary undertaking of that parent charity for the corresponding financial year: reg 9(2)(c). 'Corresponding financial year' in relation to a subsidiary undertaking means: (1) in the case of a subsidiary undertaking whose financial year ends with that of the parent charity, that year; and (2) in any other case, the financial year of the subsidiary undertaking ending immediately before the end of the financial year of the parent charity: reg 9(2)(a), (3). If the figures for the corresponding financial year of a subsidiary undertaking cannot be obtained without disproportionate expense or undue delay, the latest available figures are to be taken: reg 9(4). 'Gross income' in relation to a non-charitable subsidiary undertaking means the amount of income of that undertaking that would be construed as its gross income were it a charity: reg 9(2)(b). 'Group transactions' means all income and expenditure relating to transactions between members of the group, and all gains and losses relating to transactions between members of the group: reg 9(2)(d). As to the meaning of 'member of a group' see the Charities Act 1993 Sch 5A para 1(5) (see note 7) (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 9(2)(e)).

20 Charities Act 1993 Sch 5A paras 3(7), 4(2) (as added: see note 2); and the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 18. The sum in the text may be amended by regulations made by the Minister: see the Charities Act 1993 Sch 5A paras 3(7), 4(2) (as so added).

21 Two or more subsidiary undertakings may only be excluded from the group accounts under head (1) if they are not material when taken together: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 19(2).

22 See the Charities Act 1993 Sch 5A paras 3(7), 4(3) (as added: see note 2); and the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 19(1).

The Minister may prescribe circumstances in which a subsidiary undertaking may or, as the case may be, must be excluded from group accounts required to be prepared for a financial year: Charities Act 1993 Sch 5A paras 3(7), 4(3) (as so added). Where, by virtue of such regulations, each of the subsidiary undertakings which are members of a group is either permitted or required to be excluded from any such group accounts for a financial year, the duty to prepare group accounts does not apply to the charity trustees of the parent charity in relation to that year: Sch 5A paras 3(7), 4(4).

23 See as prepared under the Charities Act 1993 Sch 5A para 3(2).

24 Charities Act 1993 Sch 5A para 5(1) (as so added: see note 2).

25 Charities Act 1993 s 41(4) (amended by the Charities Act 2006 Sch 8 para 132; and applied by the Charities Act 1993 Sch 5A para 5(2) (as added: see note 2)). For these purposes s 41(4) applies as if s 41(5) were omitted: Sch 5A para 5(3) (Sch 5A as so added; Sch 5A para 5(3) added by SI 2008/527)).

26 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 11.

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C. FORM AND CONTENT OF STATEMENTS GENERALLY

338. Application of requirements as to form and statements of accounts.

There are statutory requirements¹ as to the form and content of a statement of accounts prepared by the charity trustees of a charity² in respect of a financial year³: (1) which begins before 1 April 2008⁴; or (2) which begins after that date, unless the charity is an exempt charity⁵.

The charity trustees of a charity may not make an accounts determination⁶ or a report determination⁷ in respect of financial year beginning before 1 April 2008 if the charity is a special case or before that date they approved the accounts of the charity prepared in respect of that financial year or authorised the signature of an annual report⁸ prepared in respect of that financial year⁹.

1 The statutory requirements as to form and content of statements of account are set out in PARA 339 et seq.

2 As to the meaning of 'charity trustees' see PARA 1 note 10. As to the meaning of 'charity' see PARA 1.

3 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4. As to the financial years to which these provisions apply see PARA 336 note 6.

The financial year of a charity which is not a company is, for the purposes of the Charities Act 1993 and regulations made under it, determined in accordance with the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 3: reg 3(1). The first financial year of a relevant charity is the period beginning with the day on which the charity is established and ending with its 'accounting reference date' or such other date, not more than seven days before or after the accounting reference date, as the charity trustees may determine: reg 3(2). The 'accounting reference date' in relation to the first financial year of the charity is such date, not less than six months and not more than 18 months, after the date on which the charity was established as the charity trustees may determine: reg 3(4)(a).

Subsequent financial years of a relevant charity begin with the day immediately following the last day of the charity's previous financial year and end with its 'accounting reference date' or such other date, not more than seven days before or after the accounting reference date, as the charity trustees may determine: reg 3(3). The 'accounting reference date' in relation to a subsequent financial year of the charity is the date 12 months after the previous accounting reference date of the charity or such date, not less than six months and not more than 18 months, after the previous accounting reference date as the charity trustees may determine, save that the charity trustees may only make such a determination with the consent of the Charity Commission in the case of: (1) a financial year beginning immediately after a financial year in respect of which the charity trustees made such a determination (or the equivalent determination in accordance with the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 6(4)(b)); or (2) a financial year where that year began immediately after a financial year in respect of which the charity trustees had made such a determination (or the equivalent determination in accordance with the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 6(4)(b)): see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 3(4)(b), (5)-(6). The charity trustees may exercise their power so as to determine an accounting reference date less, or more, than 12 months from the beginning of the financial year only where they are satisfied that there are exceptional reasons to do so: reg 3(7).

4 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(2). In such a case the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, generally continue to apply: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(2), (3).

5 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(4)(a), (5)(a). The relevant regulations (except the group provisions) also apply in respect of a transferred year: see reg 4(4)(b), (5)(b). 'Group accounts provisions' means Pt 3, Pt 4 Ch 3 and, Pt 4 Ch 3 in so far as it applies to audits carried out under the Charities Act 1993 Sch 5A para 6 (see PARA 353): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(6)(b). 'Transferred year' means a financial year of a charity which began before 1 April 2008 and in respect of which the charity trustees may make and make an accounts determination and a report determination: reg 4(6)(d).

6 'Accounts determination' means: (1) in relation to an investment fund, a determination that the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6 rather than the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 4 is to apply to the statement of accounts prepared in respect of the financial year in question; (2) in relation to any other charity, a determination that the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8 rather than the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 3 is to apply to the statement of accounts prepared in respect of the financial year in question: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(6)(a).

7 'Report determination' means: (1) in relation to an investment fund, a determination that the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38 rather than the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 12, is to apply to the annual report prepared in respect of the financial year in question; (2) in relation to any other charity, a determination that the Charities (Accounts and Reports) Regulations 2008, SI 2008/62, reg 40 rather than the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, reg 11 is to apply to the annual report prepared in respect of the financial year in question: Charities (Accounts and Reports) Regulations 2008, SI 2008/62, reg 4(6)(c).

8 In accordance with the Charities (Accounts and Reports) Regulations 2005, SI 2005/572.

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(7).

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339. Prescribed form and content of statements of accounts.

The requirements as to form and content of statements of accounts¹ prepared by the charity trustees of a charity which is not an investment fund² or a special case charity³ are as follows⁴. The statement must consist of a statement of financial activities which must show the total incoming resources and application of the resources, together with any other movements in the total resources, of the charity during the financial year⁵. The statement must also consist of a balance sheet which shows the state of affairs of the charity as at the end of the financial year⁶.

The statement must be prepared in accordance with the following principles:

- 114 (1) the statement of financial activities must give a true and fair view of the incoming resources and application of the resources of the charity in the financial year in respect of which the statement is prepared⁷;
- 115 (2) the balance sheet must give a true and fair view of the state of affairs of the charity at the end of that year⁸;
- 116 (3) where compliance with certain requirements⁹ would not be sufficient to give a true and fair view, the necessary additional information must be given in the statement of accounts or in notes to the accounts¹⁰;
- 117 (4) if in special circumstances compliance with any of those requirements would be inconsistent with giving a true and fair view, the charity trustees must depart from the requirement to the extent necessary to give a true and fair view¹¹.

The statement must be prepared in accordance with the methods and principles set out in the *Statement of Recommended Practice for Accounting and Reporting by Charities* (the 'SORP')¹². With respect to any amount required to be shown in the statement of financial activities or in the balance sheet, the statement must also show the corresponding amount¹³ for the financial year immediately preceding that to which the statement or balance sheet relates¹⁴. Where a charity has more than one fund¹⁵, only amounts corresponding to the entries in the statement of financial activities relating to the totals of both or all of the funds of the charity need be shown¹⁶.

1. See the requirements as to the form and content of a statement of accounts to which the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, apply: see PARA 338.

2. As to the requirements as to the form and content of a statement of accounts for investment funds see PARA 342.

3. As to the requirements as to the form and content of a statement of accounts for special case charities see PARA 341.

4. See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(1), (2).

5. See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(3)(a). As to the meaning of 'financial year' see PARA 338 note 4.

6. See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(3)(b). The balance sheet must be signed by one or more of the charity trustees of the charity, each of whom has been authorised to do so, and must specify the date on which the statement of accounts of which the balance sheet forms part was approved by the charity trustees: reg 8(11).

7. Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(4)(a).

8. Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(4)(b).

9. See the requirements of the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(5)-(10): see the text and notes 12-16; and PARA 340.

10. Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(4)(c).

11. Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(4)(d).

12. Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(5). The current SORP (replacing one issued in 1995, and revised and reissued in 2000) was issued in 2005 by the Charity Commission, and revised and reissued in 2008. The references in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, are to the version of the SORP issued in 2000.

Where in the financial year to which the statement of accounts relates the effect of the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(4), (5) (see the text and notes 7-11) is that there is nothing required to be shown in respect of a particular item, but an amount was required to be shown in respect of that

item in the statement of accounts for the immediately preceding financial year, those provisions have effect as if such an amount were required to be shown in the statement of accounts in the financial year to which the statement relates, and that amount were nil: reg 8(9).

13 Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the statement of financial activities or balance sheet relates, the former amount is to be adjusted: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(8).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(6). This provision is expressed to be subject to reg 8(7)-(9) (see the text and notes 12-13, 15-16): see reg 8(6).

15 'Fund' means particular assets of a charity held on trusts which, as respects the purposes for which those assets are held, or as respects the powers of the charity trustees to use or apply those assets, are not identical with those on which other assets of the charity are held: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1).

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(7).

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340. Information provided in notes to the accounts.

Specified information¹ must be provided by way of notes to the accounts². Such information, in so far as not provided in the statement of financial activities or in the balance sheet, is as follows³:

- 118 (1) particulars of any material adjustment⁴;
- 119 (2) a description of each the accounting policies which have been adopted by the charity trustees⁵ and are material in the context of the accounts of the charity, and the estimation techniques adopted by the charity trustees which are material to the presentation of the accounts; and a description of any material change to such policies and techniques, the reason for such change and its effect, if material, on the accounts, in accordance with the methods and principles set out in the *Statement of Recommended Practice for Accounting and Reporting by Charities* (the 'SORP')⁶;
- 120 (3) a description of the nature and purpose of all material funds⁷ of the charity in accordance with the methods and principles set out in the SORP⁸;
- 121 (4) such particulars of the transactions of the charity, or of any subsidiary undertaking of the charity⁹, entered into with a related party as are required to be disclosed by the SORP¹⁰;
- 122 (5) such particulars of the cost to the charity of employing and providing pensions for staff as are required by the SORP to be disclosed¹¹;
- 123 (6) such particulars of the emoluments of staff employed by the charity as may be required by the SORP to be disclosed¹²;
- 124 (7) a description of any incoming resources which represent capital, according to whether or not that capital is permanent endowment¹³;
- 125 (8) an itemised analysis of any material movement between any of the restricted funds of the charity, or between a restricted and an unrestricted fund¹⁴ of the charity, together with an explanation of the nature and purpose of each of those funds¹⁵;
- 126 (9) the name of any subsidiary undertaking of the charity, together with a description of the nature of the charity's relationship with that subsidiary undertaking and of its activities, including, where material, a statement of its

turnover and net profit or loss for the corresponding financial year¹⁶ of the institution or body corporate and any qualification expressed in an auditor's report on its accounts¹⁷;

- 127 (10) particulars of any guarantee given by the charity, where any potential liability under the guarantee is outstanding at the date of the balance sheet¹⁸;
- 128 (11) particulars of any loan outstanding at the date of the balance sheet (a) which was made to the charity, and which is secured by an express charge on any of the assets of the charity; or (b) which was made by the charity to any subsidiary undertaking of the charity¹⁹;
- 129 (12) particulars of any fund of the charity which is in deficit at the date of the balance sheet²⁰;
- 130 (13) particulars of any remuneration paid to an auditor or independent examiner in respect of auditing or examining the accounts of the charity and particulars of any remuneration paid to him in respect of any other services rendered to the charity²¹;
- 131 (14) such particulars of any grant made by the charity as may be required by the SORP to be disclosed²²;
- 132 (15) particulars of any ex gratia payment²³ made by the charity²⁴;
- 133 (16) an analysis of any entry in the statement of financial activities relating to resources expended on charitable activities as may be required by the SORP to be disclosed²⁵;
- 134 (17) such particulars of any support costs incurred by the charity as may be required by the SORP to be disclosed²⁶;
- 135 (18) an analysis of any entry in the balance sheet relating to fixed assets²⁷, debtors and creditors, according to the categories set out in the SORP²⁸;
- 136 (19) an analysis of all material changes during the financial year in question in the values of fixed assets, in accordance with the methods and principles set out in the SORP²⁹;
- 137 (20) in the case of any amount required by any of heads (1) to (19) above (other than heads (8), (14) or (19) to be disclosed)³⁰, the corresponding amount for the financial year immediately preceding that to which the accounts relate³¹;
- 138 (21) a statement as to whether or not the accounts have been prepared in accordance with any applicable accounting standards and statements of recommended practice and particulars of any material departure from those standards and statements of practice and the reasons for such departure³²;
- 139 (22) where the charity trustees have exercised their powers³³ so as to determine an accounting reference date earlier or later than 12 months from the beginning of the financial year, a statement of their reasons for doing so³⁴;
- 140 (23) if the charity trustees have departed³⁵ from any requirements of the provisions relating to the form and content of statements of account³⁶, particulars of any such departure, the reasons for it, and its effect³⁷; and
- 141 (24) any additional information: (a) which is required to ensure that the statement of accounts complies with the requirements of the provisions relating to the form and content of statements of account³⁸; or (b) which may reasonably assist the user to understand the statement of accounts³⁹.

1 Ie information specified in Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2: see the text and notes 3-40.

2 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(10), Sch 2 para 1. As to when these provisions apply see PARA 336 note 6.

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(a). The material adjustment referred to in the text is the adjustment made pursuant to reg 8(8) (see PARA 339): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(a).

5 As to the meaning of 'charity trustees' see PARA 1 note 10.

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(b), (c). As to the SORP see PARA 339 note 12.

7 As to the meaning of 'fund' see PARA 339 note 15.

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(d).

9 As to the meaning of 'subsidiary undertaking' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 3 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(e).

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(f).

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(g).

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(h).

14 'Unrestricted fund' means a fund which is to be used or applied in any way determined by the charity trustees for the furtherance of the objects of a charity, and 'restricted fund' means any other fund of a charity: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1).

15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(i).

16 As to the meaning of 'corresponding financial year' see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 9(3); and PARA 337 note 19 (definition applied by Sch 2 para 1(3)(a)). As to the meaning of 'financial year' see PARA 338 note 4.

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(j).

18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(k).

19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(l).

20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(m).

21 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(n).

22 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(o). However, this is subject to the proviso that the charity trustees of a charity that is a charitable trust created by any person are not required to disclose any information as to the identities of recipients of grants made out of the funds of the charity or the amounts of individual grants so made, if the disclosure of that information would fall to be made at a time when the settlor; or the spouse or civil partner of the settlor, is still alive: Sch 2 para 1(2), (3)(b).

23 'Ex gratia payment' means any such application of the property of a charity, or any such waiver by a charity of any entitlement to receive any property, as may be authorised under the Charities Act 1993 s 27(1) (see PARA 423): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1).

24 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(p).

25 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(q).

26 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(r).

27 'Fixed assets' means the assets of a charity which are intended for use or investment on a continuing basis: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1).

28 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(s).

29 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(t).

- 30 le other than amounts required by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(i), (o), (t) to be disclosed: see heads (8), (14), (19) in the text.
- 31 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(u).
- 32 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(v).
- 33 le under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 3(4)(b): see PARA 338.
- 34 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(w).
- 35 le under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(4)(d): see PARA 339 text to note 11.
- 36 le the provisions of the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8: see PARA 339.
- 37 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(x).
- 38 See note 37.
- 39 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(1)(y).

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D. FORM AND CONTENT OF STATEMENTS: SPECIAL CASES

341. Prescribed form and content of statements of accounts in special cases.

There are statutory requirements¹ as to the form and content of a statement of accounts prepared by the charity trustees² of a special case charity³.

The requirements as to form and content of such statement of accounts are as follows⁴. The statement must consist of an income and expenditure account and a balance sheet showing the state of affairs as at the end of the financial year in respect of which the statement of accounts is prepared⁵. It must also be prepared in accordance with the following principles:

- 142 (1) The income and expenditure account must give a true and fair view of the income and expenditure of the charity for the financial year in respect of which the statement of accounts is prepared⁶.
- 143 (2) The balance sheet must give a true and fair view of the state of affairs of the charity at the end of that year⁷.

¹ le the requirements contained in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 7: see the text and notes 4-8. As to the financial years to which these provisions apply see PARA 336 note 6.

² le under the Charities Act 1993 s 42(1): see PARA 336.

³ See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 7(1). 'Special case charity' means a charity which is either (1) a registered social landlord within the meaning of the Housing Act 1996 and whose registration has been recorded under s 3(3)(a) (see **HOUSING** vol 22 (2006 Reissue) PARA 66 et seq); or (2) has during the financial year in question (a) conducted an institution in relation to which a designation made, or having effect as if made, under the Education Reform Act 1988 s 129 has effect; (b) received financial support from funds administered by a higher education funding council or further education funding council within the meaning of the Further and Higher Education Act 1992 in respect of expenditure incurred or to be incurred by the charity in connection with that institution; and (c) incurred no expenditure for charitable purposes other

than the purposes of that institution or any other such institution: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1). As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 7(2).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 7(3). The balance sheet must be signed by at least one of the charity trustees of the charity, each of whom has been authorised to do so, and specify the date on which the statement of accounts of which the balance sheet forms part was approved by the charity trustees: reg 7(5).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 7(4)(a).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 7(4)(b).

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E. FORM AND CONTENT OF STATEMENTS: INVESTMENT FUNDS

342. Prescribed form and content of statements of accounts: investment funds.

There are statutory requirements¹ as to the form and content of a statement of accounts prepared by the charity trustees of an investment fund² in respect of a financial year³.

The requirements as to form and content of such statement of accounts are as follows⁴. The statement of accounts must consist of: (1) a statement of total return which shows the net gain or loss on investments, gross income, total expenditure and total return of the investment fund, and the total amount distributed or due, including interest paid or payable, to participating charities out of the investment fund, during the financial year in respect of which the statement of accounts is prepared⁵; (2) a statement of changes in net assets providing a reconciliation between the net assets of the investment fund at the beginning of the relevant financial year and the net assets at the end of that year⁶, save in the case of any financial year of a common deposit fund in which there are no gains or losses on disposal or revaluation of assets⁷; and (3) a balance sheet which shows the state of affairs of the investment fund as at the end of the relevant financial year⁸.

In respect of every amount required to be shown in the statement of total return, statement of changes in net assets and the balance sheet, the corresponding amount for the financial year immediately preceding the relevant financial year must also be shown⁹, save that, where the corresponding amount is not comparable with the amount to be shown for the item in question in respect of the relevant financial year, the former amount must be adjusted and particulars of any such material adjustment must be disclosed in a note to the accounts¹⁰.

The statement must be prepared in accordance with the following principles¹¹:

- 144 (a) the statement of total return must give a true and fair view of the incoming resources and application of the resources of the investment fund in the relevant financial year¹²;
- 145 (b) the balance sheet must give a true and fair view of the state of affairs of the investment fund at the end of that year¹³;
- 146 (c) the statement of changes in net assets must give a true and fair view of the movements in the net assets of the investment fund between their position at the beginning of the relevant financial year and their position at the end of that year¹⁴;

- 147 (d) where compliance with certain requirements¹⁵ would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to the accounts¹⁶;
- 148 (e) if in special circumstances compliance with any of those requirements would be inconsistent with giving a true and fair view, the charity trustees must depart from the requirement to the extent necessary to give a true and fair view, and particulars of the departure, the reasons for it and its effect must be given in a note to the accounts¹⁷.

The values at which assets and liabilities of an investment fund are recorded in the balance sheet, and the recognition bases for gains and losses, must be determined in accordance with the methods and principles set out in the *Statement of Recommended Practice for Financial Statements of Authorised Funds* ('IMA SORP')¹⁸.

1 The requirements contained in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6: see the text and notes 3-11. As to the financial years to which these provisions apply see PARA 336 note 6.

2 The under the Charities Act 1993 s 42(1): see PARA 336. 'Investment fund' means a common deposit fund or a common investment fund: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1). As to common investment funds see PARA 419. As to common deposit funds see PARA 420. As to the meaning of 'charity trustees' see PARA 1 note 10.

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(1). As to the meaning of 'financial year' see PARA 338 note 4.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(2).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(3)(a), Sch 1 para 1. This information must be analysed by reference to:

20 (1) net gains or losses on investments analysed as arising from non-derivative securities, derivative contracts and forward currency contracts (Sch 1 para 2(a));

21 (2) gains or losses on other assets (Sch 1 para 2(b));

22 (3) gross income, divided into dividends in respect of shares, scrip dividends, interest on securities, interest on deposits at banks and building societies, underwriting commission and other income (Sch 1 para 2(c));

23 (4) expenses incurred in the administration of the investment fund, divided into fees payable in respect of investment management services provided to the investment fund, fees payable in respect of the maintenance of the register of charities participating in the investment fund, fees payable in respect of any audit of the accounts of the investment fund, fees payable to the person carrying out such an audit in respect of other services for the investment fund provided by him, fees payable in respect of the safe custody of the assets of the investment fund, fees payable in respect of other administrative services provided to the investment fund and other expenditure divided into such categories as reasonably enable the user to gain an appreciation of the expenditure incurred (Sch 1 para 2(d));

24 (5) interest incurred in the administration of the investment fund (Sch 1 para 2(e));

25 (6) net income of the investment fund before taxation calculated as follows: A minus B where A is the total amount entered under head (3) above and B is the aggregate of the total amounts entered in that statement pursuant of heads (4) and (5) (Sch 1 para 2(f));

26 (7) tax borne by the investment fund in respect of income, profits or gains during the relevant financial year, divided into income tax or capital gains tax to which the investment fund is liable in the United Kingdom and overseas tax (Sch 1 para 2(g));

- 27 (8) net income of the investment fund after taxation calculated as follows: A minus B where A is the amount entered under head (6) above and B is the amount entered under head (7) above (Sch 1 para 2(h));
- 28 (9) total return of the investment fund before distributions which is calculated by aggregating the amounts entered under heads (1), (2) and (8) above (Sch 1 para 2(i));
- 29 (10) the amount distributed or due in respect of income and accumulation shares, and interest paid or payable to charities who have deposited sums during the relevant financial year (Sch 1 para 2(j));
- 30 (11) the change in value of the investment fund resulting from its activities calculated as follows: A minus B where A is the amount entered under head (8) and B is the amount entered under head (9) above (Sch 1 para 2(k)).

Where any of heads (1)-(11) require information to be divided into separate categories, the division of that information into such separate categories may, if the charity trustees so elect, be effected instead by means of a note to the accounts: see Sch 1 para 4. As to such a note see PARA 343.

In the case of a common investment fund established by a scheme which, in pursuance of the Charities Act 1960 s 22(5) (repealed) or the Charities Act 1993 s 24(5), includes provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity is entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme, the analysis in heads (1)-(11) above must distinguish between the amount of capital and income to be shared between charities participating otherwise than by way of deposit and the amount of capital and income that is required in respect of the liabilities of the investment fund for the repayment of deposits and for interest on deposits (including amounts required by way of reserve): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 3.

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(3)(b), Sch 1 para 5. The reconciliation must show: (1) the value of the net assets at the beginning of the relevant financial year; (2) the change in value of the investment fund calculated in accordance with head (11) of note 5; (3) the value of the net assets at the end of the relevant financial year; (4) particulars of any other items necessary to provide the reconciliation required by the statement of total return; and (5) in the case of a common investment fund, the amount or value of any property transferred to or withdrawn from the investment fund during the relevant financial year by participating charities and the amount of any distribution of income due in respect of accumulation shares: Sch 1 para 6.

In the case of a common investment fund to which Sch 1 para 3 applies (see note 5), this analysis must distinguish between the amount of capital and income to be shared between charities participating otherwise than by way of deposit and amount of capital and income that is required in respect of the liabilities of the investment fund for the repayment of deposits and for interest on deposits (including amounts required by way of reserve): Sch 1 para 7.

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(4).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(3)(c), Sch 1 para 8. In the case of a common investment fund to which Sch 1 para 3 does not apply, this is shown by reference to:

- 31 (1) tangible fixed assets for use by the investment fund (Sch 1 para 9(a));
- 32 (2) investments (Sch 1 para 9(b));
- 33 (3) other assets, divided into debtors, deposits and loans, cash at bank and in hand, and others (Sch 1 para 9(c));
- 34 (4) total assets calculated by aggregating the amounts entered under heads (1)-(3) (Sch 1 para 9(d));
- 35 (5) derivative liabilities (Sch 1 para 9(e));
- 36 (6) other liabilities, divided into creditors, bank overdrafts, other loans and distributions payable to participating charities (Sch 1 para 9(f));
- 37 (7) total liabilities calculated by aggregating the amounts entered under heads (5) and (6) (Sch 1 para 9(g));

- 38 (8) net assets which is calculated as follows: A minus B where A is the amount entered under head (4) and B is the amount entered under head (7) (Sch 1 para 9(h)).

In the case of a common investment fund to which Sch 1 para 3 applies, this is shown by reference to heads (1)-(8) above in relation to the amount of capital and income to be shared between charities participating otherwise than by way of deposit, and by reference to heads (a)-(j) below (ie the provisions for common deposit funds) in relation to the amount of capital and income that is required in respect of the liabilities of the investment fund for the repayment of deposits and for interest on deposits (including amounts required by way of reserve): Sch 1 para 10.

In the case of a common deposit fund, the specified information is:

- 39 (a) cash at bank and in hand (Sch 1 para 11(a));
- 40 (b) debtors (Sch 1 para 11(b));
- 41 (c) deposits and investments, divided into deposits at the Bank of England, deposits with a person who has permission under the Financial Services and Markets Act 2000 Pt IV (see **FINANCIAL SERVICES AND INSTITUTIONS**) to accept deposits, other bank deposits, other deposits and other investments (Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 11(c));
- 42 (d) current assets not included in heads (a)-(c) (Sch 1 para 11(d));
- 43 (e) tangible fixed assets for use by the common deposit fund (Sch 1 para 11(e));
- 44 (f) gross assets which is calculated by aggregating the amounts entered under heads (a)-(e) (Sch 1 para 11(f));
- 45 (g) sums deposited by participating charities (Sch 1 para 11(g));
- 46 (h) other liabilities, divided into creditors, bank overdrafts, other loans and interest accrued or payable to participating charities (Sch 1 para 11(h));
- 47 (i) sums held as an income reserve on trust for existing depositors (Sch 1 para 11(i)); and
- 48 (j) total liabilities which is calculated by aggregating the amounts entered under heads (g), (h) and (i) (Sch 1 para 11(j)).

Despite the requirement in head (c) above to divide into separate categories the information to be provided by dividing the information into separate categories, the division of that information into those categories may, if the charity trustees so elect, be effected instead by means of a note to the accounts: Sch 1 para 12. As to such a note see PARA 343.

The balance sheet must, if the scheme or schemes regulating the investment fund allocates responsibility for preparing the accounts to a particular person, be signed and dated by that person, else by at least one of the charity trustees of the investment fund, each of whom has been authorised to do so: reg 6(7). Where the balance sheet is signed by the latter, it must specify the date on which the statement of accounts of which the balance sheet forms part was approved by the charity trustees: reg 6(8).

9 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(5), Sch 1 para 14(1). Where the effect of the principles according to which the statement must be prepared (ie Sch 1 para 13, on which see below text and notes 13-17) is that in the relevant financial year there was nothing required to be shown by one or more of the provisions specified in Sch 1 para 14(1) in respect of a particular item but an amount was required to be shown by that provision for that item in the statement of accounts prepared for the financial year immediately preceding the relevant financial year, Sch 1 para 14(1) has effect as if such an amount were required to be shown in the relevant financial year and that amount were nil: Sch 1 para 14(3).

10 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 14(2).

11 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(5), Sch 1 para 13.

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 13(1).

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 13(2).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 13(3).

15 le the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 paras 1-12 (see notes 7-8, 10), 16 (see PARA 343).

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 13(4).

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 13(5).

18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(5), Sch 1 para 15. The current IMA SORP was issued in 2008 by the Investment Management Association. The references in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, are to the version of the SORP issued in 2005: Sch 1 para 17(1).

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343. Information provided in notes to the accounts: investment funds generally.

Specified information¹ must be provided by way of notes to the accounts². Such information, in so far as not provided in the statement of accounts, is as follows³:

- 149 (1) a description of the accounting policies adopted for the investment fund and, in particular, the basis of valuation of investments, the recognition of dividend income or interest and the conversion of any amounts expressed in currency other than pounds sterling⁴;
- 150 (2) a description of the accounting assumptions made by the investment fund, including any material change in these assumptions, the reason for such change and its material effect on the accounts⁵;
- 151 (3) where the charity trustees⁶ have during the relevant financial year entered into any transaction, agreement or arrangement made for the purpose of minimising the risk of loss to the investment fund in consequence of fluctuations in interest rates or in the market value of securities or in the rates of foreign exchange, or entered into any other transaction in financial futures or options relating to shares, securities, foreign currency or into any other financial instrument the value of which is dependent on or derived from the price movements in one or more underlying assets, the nature of, and reason for, entering into that transaction, agreement or arrangement and the total value of, and the maximum extent of financial exposure as at the date of the balance sheet resulting from, that transaction, agreement or arrangement⁷;
- 152 (4) a statement as to whether any remuneration or other benefits (together with the amount of such remuneration or, as the case may be, the monetary value of such benefits and the name of the person to whom the remuneration or benefit has been paid or is payable) has been paid or is payable to any person who is a charity trustee of the investment fund, or to whom functions in relation to management of the investment fund have been delegated ('manager'), or connected with such a charity trustee or manager directly or indirectly from the property of the investment fund or from the property of any subsidiary undertaking of the investment fund⁸;
- 153 (5) particulars of any transaction undertaken in the name of or on behalf of the investment fund in which any person referred to in head (4) has a material interest⁹;
- 154 (6) an analysis of the amount and date of any distribution in respect of income and accumulation shares or payment of interest to participating charities¹⁰;

- 155 (7) a note of any adjustments made in the statement of total return to reflect the amount of income included in the creation or cancellation price of a unit or share in the investment fund¹¹;
- 156 (8) the name of any subsidiary undertaking of the investment fund, together with a description of the nature of the investment fund's relationship with that subsidiary undertaking and of its activities, and, where material, a statement of the turnover and net profit or loss of the subsidiary undertaking for the corresponding financial year¹² and any qualification expressed in an auditor's report on the accounts of the subsidiary undertaking for that financial year¹³;
- 157 (9) particulars of any loan or guarantee secured against any of the assets of the investment fund¹⁴;
- 158 (10) an explanation of any amount entered in pursuance of income tax or capital gains tax to which the investment fund is liable in the United Kingdom¹⁵ ('United Kingdom tax')¹⁶;
- 159 (11) an analysis of any entry in the balance sheet relating to:
- 2
1. (a) tangible fixed assets for use by the investment fund, according to the following categories of: freehold interests in land and buildings; any other interest in land and buildings; payments on account and assets in course of construction; and plant, machinery, fixtures, fittings and equipment¹⁷;
 2. (b) debtors, according to the following categories of: amounts receivable in respect of securities sold; accrued income; other debtors; and, in the case of a common investment fund, amounts receivable in respect of property transferred to the investment fund¹⁸;
 3. (c) creditors, according to the following categories of: amounts payable in respect of securities purchased; accrued expenses; other creditors; and in the case of a common investment fund, amounts payable in respect of property withdrawn from the investment fund¹⁹;
- 3
- 160 (12) the following particulars of any contingent liability: (a) its amount or estimated amount; (b) its legal nature; and (c) whether any valuable security has been provided by the investment fund in connection with that liability and, if so, what²⁰;
- 161 (13) particulars of any other financial commitments which have not been provided for and are relevant to assessment of the state of affairs of the investment fund²¹;
- 162 (14) in the case of any amount required by any of the heads (1) to (13) to be disclosed, or the percentage of net assets represented by each category of certain investments required to be disclosed²², or the percentage of investment assets represented by each class of certain investments required to be disclosed²³, the corresponding amount or percentage for the financial year immediately preceding the relevant financial year²⁴;
- 163 (15) a statement as to whether or not the accounts have been prepared in accordance with any applicable accounting standards and statements of recommended practice and particulars of any material departure from those standards and practices and the reasons for such departure²⁵;
- 164 (16) where the charity trustees have exercised their powers for determining the accounting reference date²⁶ a statement of their reasons for doing so²⁷;
- 165 (17) any other information which is required²⁸ to be disclosed in a note to the accounts or which may reasonably assist the user to understand the statement of accounts²⁹;
- 166 (18) specified information in the case of a common investment fund and in the case of a common deposit fund³⁰.

- 1 The information specified in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(6), Sch 1 para 16: see the text and notes 4-30.
- 2 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6(6). These provisions apply to financial years beginning on or after 1 April 2008: see PARA 336 note 6.
- 3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1). As to additional information to be provided in relation to a common investment fund see PARA 344 and as to additional information to be provided in relation to a common deposit fund see PARA 345.
- 4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(a).
- 5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(b).
- 6 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(c).
- 8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(d). A person 'A' is connected with a charity trustee or a person to whom functions in relation to the management of the investment fund have been delegated if: (1) A is the child, parent, grandchild, grandparent, brother or sister of the charity trustee or manager; (2) A is the spouse or the civil partner of the charity trustee or manager; or any person connected with a charity trustee or manager by virtue of head (1); (3) A is the trustee of any trust which is not a charity and the beneficiaries or potential beneficiaries of which include the charity trustee or manager or any person connected with that trustee or manager by virtue of head (1) or (2) and is acting in his capacity as trustee of that trust; (4) A is carrying on a business in partnership with the charity trustee or manager or any person connected with a trustee or manager by virtue of head (1), (2) or (3) and is acting in his capacity as such a business partner; or (5) A is a body corporate which is not a company which is connected with a charitable institution within the meaning of the Charities Act 1992 s 58(5) but in which the charity trustee or manager has (or the charity trustee or manager, any other trustee or manager of the investment fund or persons connected with him or them by virtue of head (1), (2), (3) or (4), taken together, have) a substantial interest: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 17(2). As to the meaning of 'child' see the Charities Act 1993 Sch 5 para 2; and PARA 395 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 17(3)(a)). Whether a person controls an institution is to be determined in accordance with the Charities Act 1993 Sch 5 para 3; and whether a person has a substantial interest in a body corporate is to be determined in accordance with Sch 5 para 4: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 17(3)(b), (c).
- 9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(e).
- 10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(f).
- 11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(g).
- 12 As to the meaning of 'corresponding financial year' see PARA 340 note 17: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(4).
- 13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(h).
- 14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(i).
- 15 The any amount entered in pursuance of the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 2(g)(i).
- 16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(j).
- 17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(k)(i).
- 18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(k)(ii).
- 19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(k)(iii).
- 20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(l).
- 21 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(m).
- 22 The information required by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 1(2)(a)(iv) of the additional requirements for a common investment fund: see text and note 3.

- 23 le the information required by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 1(2)(a)(v) of the additional requirements for a common investment fund: see text and note 3.
- 24 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(n).
- 25 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(o).
- 26 le under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 3(4)(b): see PARA 338 note 3.
- 27 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(p).
- 28 le required by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629.
- 29 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(r).
- 30 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(q); and PARAS 344, 345.

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344. Information provided in notes to the accounts: common investment funds.

In addition to the information to be provided in relation to an investment fund¹, a common investment fund² must include in the notes to the accounts the following statements made up to the date of the balance sheet³:

- 167 (1) a portfolio statement, specifying details of each investment held by or on behalf of the investment fund, including: (a) its market value at that date and whether the investment in question is listed on a recognised stock exchange⁴; (b) the category of each such investment determined according to its geographical area or industrial sector⁵; (c) where the investment fund invests in more than one class of assets, the market value at that date of each class of investment⁶; (d) the percentage of net assets represented by each investment so held and by each category of investment specified under head (b)⁷; (e) the percentage of investment assets represented by each class of investments specified under head (c)⁸; and (f) an analysis of the credit rating of any interest-bearing securities held at that date, as may be required by the IMA SORP to be given⁹;
- 168 (2) a statement of major changes in the portfolio, specifying: (a) where the relevant financial year is the first financial year of the investment fund and the aggregate value of purchases or sales of a particular investment during the financial year exceeds 2 per cent of net assets at the end of that year, or, where the relevant financial year is not the first financial year of the investment fund and the aggregate value of purchases or sales of a particular investment during the relevant financial year exceeds 2 per cent of net assets at the beginning of that year, that value¹⁰; (b) unless disclosed under head (a), the value of the 20 largest purchases and sales of a particular investment during the relevant financial year¹¹; and (c) the total cost of purchase and net proceeds from sales of investments during the relevant financial year¹²;
- 169 (3) a statement of the number of shares issued as at the beginning of the relevant financial year, the number of shares issued as at the date of the balance

sheet and the value of each income or accumulation share as at each of those dates, calculated by reference to the net asset value of the investment fund¹³; and
 170 (4) a statement of the amount, if any, in the dividend equalisation reserve¹⁴.

1 le the information specified under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 1(1) (see PARA 343).

2 'Common investment fund' means a common investment fund established by a scheme under the Charities Act 1960 s 22 (repealed) or the Charities Act 1993 s 24 (see PARA 419): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(2).

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(q)(i), (2).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(a)(i). 'Recognised stock exchange' has the meaning given by the Income Tax Act 2007 s 1005: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 17(1). See **INCOME TAXATION**.

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(a)(ii).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(a)(iii).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(a)(iv).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(a)(v).

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(a)(vi).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(b)(i).

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(b)(ii).

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(b)(iii).

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(c).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(2)(d). 'Dividend equalisation reserve' means income withheld from distribution with a view to avoiding fluctuations in the amounts distributed: Sch 1 para 17(1).

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345. Information provided in notes to the accounts: common deposit funds.

In addition to the information to be provided in relation to an investment fund¹, a common deposit fund² must include in the notes to the accounts the following information³:

171 (1) details of sums deposited by participating charities as at the date of the balance sheet, divided into: (a) sums repayable on demand; and (b) deposits with agreed maturity dates or periods of notice, divided into those repayable in not more than three months, those repayable in more than three months but not more than one year, those repayable in more than one year but not more than five years and those repayable in more than five years⁴;

172 (2) details as at the date of the balance sheet of sums placed on deposit, divided into: (a) sums repayable on demand; and (b) other deposits, indicating whether they are repayable in not more than three months, more than three months but not

more than one year, more than one year but not more than five years or more than five years⁵;
 173 (3) details as at the date of the balance sheet of investments other than deposits⁶.

1 le the information specified under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 1(1) (see PARA 343).

2 A 'common deposit fund' means a common deposit fund established by a scheme under the Charities Act 1960 s 22A or the Charities Act 1993 s 25: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1).

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(1)(q)(ii), (3).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(3)(a).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(3)(b)(i).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 1 para 16(3)(b)(ii). These must be analysed in accordance with the requirements of head (1) in the text of the additional requirements for a common investment fund under Sch 1 para 16(2)(a) (see PARA 344): Sch 1 para 16(3)(b)(ii).

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F. FORM AND CONTENT OF STATEMENTS: GROUP ACCOUNTS

346. Prescribed form and content of statements of group accounts: general requirements.

The group accounts¹ prepared by the charity trustees² of any parent charity³ must be prepared in accordance with applicable accounting principles⁴ and, in particular, must make following the adjustments or include the following information prescribed⁵:

174 (1) the group accounts must incorporate in full the information contained in the individual accounts of the parent charity and its relevant subsidiary undertakings⁶, subject to such consolidation adjustments, if any, as may be appropriate in accordance with applicable accounting principles⁷;

175 (2) where the financial year of a relevant subsidiary undertaking differs from that of the parent charity, the group accounts must be made up from the accounts of the relevant subsidiary undertaking for its most recent financial year ending before the last day of the parent financial year, provided that financial year ended no more than three months before the parent financial year ended, or from interim accounts prepared by the relevant subsidiary undertaking as at the end of the parent financial year⁸;

176 (3) where an undertaking becomes a subsidiary undertaking of a parent charity, that event must be accounted for in the group accounts by the acquisition method or merger method of accounting as appropriate in accordance with applicable accounting principles⁹;

177 (4) where the parent charity or a relevant subsidiary undertaking has an interest in an associated undertaking or participates in the management of a joint venture and that associated undertaking or joint venture is not itself a subsidiary

- undertaking of the parent charity, or participates in a joint arrangement, the interest of the parent charity or subsidiary undertaking in that associated undertaking, joint venture or joint arrangement must appear in the group accounts as appropriate in accordance with applicable accounting principles¹⁰;
- 178 (5) the consolidated balance sheet must identify as a separate item any minority interest in the net assets or liabilities of any relevant subsidiary undertaking as appropriate in accordance with applicable accounting principles¹¹; and
- 179 (6) the consolidated statement of financial activities, consolidated income and expenditure account or consolidated statement of changes in net assets, as relevant, must identify as a separate item any minority interest in the net movement of the funds of a relevant subsidiary undertaking as appropriate in accordance with applicable accounting principles¹².

Where compliance with the group accounts requirements¹³ is not sufficient to comply with any requirement to give a true and fair view¹⁴, the necessary additional information must be given in the group accounts or a note to them¹⁵. If in special circumstances compliance with any of the group accounts requirements is inconsistent with a requirement to give a true and fair view, the charity trustees must depart from the relevant provision to the extent necessary to give a true and fair view, and the particulars of any such departure, the reasons for it and its effect must be given in a note to the group accounts¹⁶.

1 As to group accounts see PARA 337.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 I.e. any parent charity under the Charities Act 1993 Sch 5A para 3(2) (see PARA 337). As to the meaning of 'parent charity' see Sch 5A para 1; and PARA 337 note 2 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

4 'Applicable accounting principles' means, in relation to a parent charity that is required to prepare group accounts: (1) the methods and principles set out in the financial reporting standards and statements of standard accounting practice issued by the body known as the Accounting Standards Board (the 'Board') that are relevant to the preparation of those accounts by that parent charity; (2) any abstract issued by the committee of the Board known as the Urgent Issues Task Force which is relevant to the preparation of those accounts by that parent charity, and (3) any statement of recommended practice (including the *Statement of Recommended Practice*) issued by a body recognised by the Board for the purpose of issuing guidance on the standards in head (1) relevant to the preparation of those accounts by that parent charity: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(9)(a). As to the Accounting Standards Board see the Accounting Standards (Prescribed Body) Regulations 2008, SI 2008/651; and **COMPANIES**.

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(1), (2). This is in addition to complying with reg 13, 14 or 15 (see PARAS 347-349), as the case may be.

6 'Relevant subsidiary undertaking' means a subsidiary undertaking of the parent charity which is not excluded under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 19 (see PARA 337) from the group accounts required to be prepared for the parent financial year: reg 16(9)(c). As to the meaning of 'subsidiary undertaking' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 3 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)). 'Parent financial year' means the financial year of the parent charity in respect of which the group accounts are prepared: reg 16(9)(b).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(3).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(4).

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(5).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(6).

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(7).

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16(8).

13 'Group accounts requirements' means the general requirements under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 16 (see notes 1-12), plus the additional requirements prescribed for parent charities that are special case charities, investment funds or other charities: see reg 17(4). As to these additional requirements see regs 13-15; and PARAS 347-349.

14 As to these requirements see PARAS 347 text and note 7, 348 text and note 7, 349 text and note 8.

15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 17(1).

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 17(2), (3).

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347. Prescribed form and content of statements of group accounts: parent charities that are not special case charities or investment funds.

In addition to the general requirements as to the form and content of statements of group accounts¹, the group accounts prepared by the charity trustees² of a parent charity³ other than a special case charity⁴ or an investment fund⁵ must consist of a consolidated statement of financial activities showing the total incoming resources and application of the resources, together with any other movements in the total resources, of the parent charity and its subsidiary undertakings in the relevant financial year, and a consolidated balance sheet showing the state of affairs of the parent charity and its subsidiary undertakings as at the end of the relevant financial year⁶.

In addition, the group accounts must be prepared in accordance with the following principles: (1) the consolidated statement of financial activities must give a true and fair view of the total incoming resources of the parent charity and its subsidiary undertakings and the movements in the total resources of the group during the relevant financial year; and (2) the consolidated balance sheet must give a true and fair view of the state of affairs of the parent charity and its undertakings as at the end of the relevant financial year⁷.

The group accounts prepared under the above provisions must, so far as practicable, comply with certain statutory requirements⁸ as if a parent charity and its subsidiary undertakings were a single charity⁹; and in any case where the parent charity is a company, be prepared as if its charity trustees had been required to prepare a statement of accounts under the relevant provisions¹⁰ of the Charities Act 1993¹¹.

1 As to the general requirements see PARA 346. As to group accounts see PARA 337. However where the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 15(5)(b) applies instead of providing a statement of reasons, by way of a note to the account, where the charity trustees have exercised their powers so as to determine an accounting reference date earlier or later than 12 months from the beginning of the financial year, a statement of their reasons for doing so, such a statement must be provided where the company has exercised its power under the Companies Act 1985 s 225 (repealed: see now the Companies Act 2006 392; and **COMPANIES**) to determine to determine an accounting reference date earlier or later than 12 months from the beginning of the financial year, a statement of their reasons for doing so: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, Sch 2 para 1(w) (substituted by reg 15(6)).

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 As to the meaning of 'parent charity' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 2 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

- 4 le a charity to which the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 13 (see PARA 349) applies. As to the meaning of 'special case charity' see PARA 341 note 3.
- 5 le a charity to which the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 14 (see PARA 348) applies.
- 6 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 15(1)-(3).
- 7 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 15(1), (2), (4).
- 8 le the requirements of the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 8(6)-(10): see PARA 339.
- 9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 15(1), (2), (5)(a).
- 10 le under the Charities Act 1993 s 42(1) (see PARAS 339-340).
- 11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 15(1), (2), (5)(b). See note 1.

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348. Prescribed form and content of statements of group accounts: parent charities that are special case charities.

In addition to the general requirements as to the form and content of statements of group accounts¹, the group accounts prepared by the charity trustees² of a parent charity³ that is a special case charity⁴ must consist of a consolidated income and expenditure account dealing with the income and expenditure of the parent charity and its subsidiary undertakings⁵ for the relevant financial year, and a consolidated balance sheet dealing with the state of affairs of the parent charity and its subsidiary undertakings as at the end of the relevant financial year⁶.

The group accounts must also be prepared in accordance with the following principles: (1) the consolidated income and expenditure account must give a true and fair view of the income and expenditure of the parent charity and its subsidiary undertakings as a whole in the relevant financial year; and (2) the consolidated balance sheet must give a true and fair view of the state of affairs of the parent charity and its subsidiary undertakings as at the end of the relevant financial year⁷.

The group accounts must be signed by at least one of the charity trustees of the charity, each of whom has been authorised to do so, as if the parent charity and its subsidiary undertakings required to be included in the group accounts were a single charity⁸.

- 1 As to the general requirements see PARA 346. As to group accounts see PARA 337.
- 2 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 3 As to the meaning of 'parent charity' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 2 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).
- 4 As to the meaning of 'special case charity' see PARA 341 note 3.
- 5 As to the meaning of 'subsidiary undertaking' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 3 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).
- 6 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 14(1)-(3). As to the meaning of 'financial year' see PARA 338 note 4.

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 14(1), (2), (4).

8 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 14(1), (2), (5).

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349. Prescribed form and content of statements of group accounts: parent charities that are investment funds.

In addition to the general requirements as to the form and content of statements of group accounts¹, the group accounts prepared by the charity trustees² of a parent charity³ that is an investment fund⁴ must consist of a consolidated statement of total return dealing with the total return of the parent charity and its subsidiary undertakings⁵ in the relevant financial year⁶, a consolidated statement of changes in net assets dealing with the changes in the net assets of the parent and its subsidiary undertakings in the relevant financial year, and a consolidated balance sheet dealing with the state of affairs of the parent and its subsidiary undertakings as at the end of the relevant financial year⁷.

The group accounts also must be prepared in accordance with the following principles: (1) the consolidated statement of total return must give a true and fair view of the total return of the parent charity and its subsidiary undertakings in the relevant financial year; (2) the consolidated statement of changes in net assets must give a true and fair view of the changes in the net assets of the parent charity and its subsidiary undertakings between their position at the beginning of the relevant financial year and their position at the end of that year; and (3) the consolidated balance sheet must give a true and fair view of the state of affairs of the parent charity and its subsidiary undertakings at the end of the relevant financial year⁸.

The group accounts must so far as practicable, comply with the following accounting requirements for investment funds as if the parent charity and its subsidiary undertakings required to be included in the group accounts were a single charity: (a) the requirements for a statement of total return; (b) the requirements for a statement of changes in net assets; and (c) the requirements for information to be provided by way of notes to the accounts⁹.

1 As to group accounts see PARA 337.

2 As to the meaning of 'charity trustees' see PARA 1 note 10.

3 As to the meaning of 'parent charity' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 2 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

4 As to the meaning of 'investment fund' see PARA 342 note 2.

5 As to the meaning of 'subsidiary undertaking' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 3 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

6 As to the meaning of 'financial year' see PARA 338 note 4.

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 13(1)-(3).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 13(1), (2), (4).

9 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 13(1), (2), (5). As to the accounting requirements for investment funds see PARA 342.

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G. ANNUAL AUDITS, EXAMINATIONS OR INDEPENDENT EXAMINATIONS

350. Annual audit or examination of charity accounts.

If a charity's gross income¹ for a financial year² exceeds £500,000, or if it exceeds £100,000³ and at the end of the year the aggregate value of its assets before deduction of liabilities exceeds £3.26 million⁴, the accounts of the charity for that year must be audited by a person who is: (1) eligible⁵ for appointment as a statutory auditor⁶; or (2) a member of a body for the time being specified in regulations⁷ and is under the rules of that body eligible for appointment as auditor of the charity⁸.

If the gross income does not exceed £500,000, or £100,000 where the aggregate value of assets before deduction of liabilities exceeds £3.26 million, and its gross income or total expenditure in that year exceeds £25,000, the accounts of the charity for that year must, at the election of the charity trustees⁹, either be examined by an independent examiner¹⁰, or be audited by such person mentioned in head (1) or (2) above¹¹.

Where it appears to the Charity Commission that: (a) the requirement for an audit or, as the case may be, examination¹² has not been complied with in relation to a financial year of a charity within ten months from the end of that year¹³; or that (b) although it is not a case in which an audit is required¹⁴, it would nevertheless be desirable for the accounts for that year to be audited by such a person mentioned in head (1) or (2) above¹⁵, the Commission may by order require the accounts of the charity for that year to be audited by such a person¹⁶. Unless the circumstances are those set out in head (b) above, and the charity trustees themselves appoint an auditor in accordance with the order of the Commission, the auditor will be appointed by the Commission¹⁷. The expenses of any audit carried out by an auditor so appointed by the Commission, including the auditor's remuneration, are recoverable by it from the charity trustees of the charity concerned, who are personally liable, jointly and severally for those expenses¹⁸. To the extent that the expenses are not practically recoverable from the charity trustees they are recoverable from the charity funds¹⁹.

An appeal against such an order of the Commission lies to the Tribunal²⁰ at the instance of the Attorney General, the charity trustees of the charity, the charity itself (if a body corporate), and any other person who is or may be affected by the order²¹. The Charity Tribunal has the power to do any of the following: (i) quash the order; (ii) substitute for the order any other order which could have been made by the Commission; (iii) add anything to the order which could have been contained in an order made by the Commission²².

The above provisions do not apply to any exempt charity²³, certain charities which are not required to be registered²⁴, and are not registered²⁵, a charity which is audited in accordance with the companies legislation²⁶, or a charity which at any time in the relevant financial year is an English National Health Service charity or Welsh National Health Service charity²⁷.

1 As to the meaning of 'gross income' see PARA 217 note 2. As to the meaning of 'charity' see PARA 1.

2 These provisions apply to any financial year of a charity which begins on or after 27 February 2007: Charities Act 2006 Sch 10 para 7. As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

3 Or such other sum as is for the time being specified in the Charities Act 1993 s 42(3) (see PARA 336).

4 See the Charities Act 1993 s 43(1) (substituted by the Charities Act 2006 s 28(2); amended by SI 2009/508). The Minister may by order amend the Charities Act 1993 s 43(1) or (3) or (3A) by substituting a different sum for the sum for the time being specified there: s 43(8)(a) (substituted by the Charities Act 2006 s 28(6)). As to the Minister see PARA 580.

5 In accordance with the Companies Act 2006 Pt 42: see **COMPANIES**.

6 Charities Act 1993 s 43(2)(a) (substituted by SI 2008/948).

7 In accordance with the Charities Act 1993 s 44: see PARA 355.

8 Charities Act 1993 s 43(2)(b).

9 As to the meaning of 'charity trustees' see PARA 1 note 10.

10 The independent examiner is an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts: Charities Act 1993 ss 43(3)(a), 97(1). The Charity Commission may give guidance to charity trustees in connection with the selection of a person for appointment as an independent examiner, and give such directions as it thinks appropriate with respect to the carrying out of an examination under s 43(3)(a): s 43(7)(a), (b) (amended by the Charities Act 2006 Sch 8 para 134(5)(b)). Any such guidance or directions may either be of general application or apply to a particular charity only: Charities Act 1993 s 43(7) (amended by the Charities Act 2006 Sch 8 para 134(5)). However, this is subject to the Charities Act 1993 s 43(3A), (4): s 43(3) (amended by the Charities Act 2006 s 28(4)). Where the financial year begins on or after 1 April 2008, if the charity's gross income or total expenditure in that year exceeds £250,000, a person qualifies as an independent examiner for these purposes only if he is an independent person who is (1) a member of one of the following bodies: the Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants of Scotland; the Institute of Chartered Accountants in Ireland; the Association of Chartered Certified Accountants; the Association of Authorised Public Accountants; the Association of Accounting Technicians; the Association of International Accountants; the Chartered Institute of Management Accountants; the Institute of Chartered Secretaries and Administrators; the Chartered Institute of Public Finance and Accountancy, or (2) a Fellow of the Association of Charity Independent Examiners: see the Charities Act 1993 s 43(3A), (3B) (s 43(3A) added by the Charities Act 2006 s 28(5); and amended by SI 2008/527; the Charities Act 1993 s 43(3B) added by SI 2008/527). As to the Charity Commission see PARAS 538-572. The Minister may by order amend the Charities Act 1993 s 43(3A), (3B): see s 43(8)(b), (c) (s 43(8)(c) added by SI 2008/527).

11 Charities Act 1993 s 43(3) (amended by the Charities Act 2006 s 28(4)(a)). The duties of an independent examiner with respect to the making of a report in respect of an examination carried out by him under the Charities Act 1993 s 43 are specified in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31 (see PARA 360): reg 20.

12 In accordance with the Charities Act 1993 s 43(2) or (3): see the text and notes 5-10.

13 Charities Act 1993 s 43(4)(a) (amended by the Charities Act 2006 Sch 8 para 134(2)).

14 In accordance with the Charities Act 1993 s 43(2): see the text and notes 5-7.

15 Charities Act 1993 s 43(4)(b) (amended by the Charities Act 2006 Sch 8 para 134(2)).

16 Charities Act 1993 s 43(4) (amended by the Charities Act 2006 Sch 8 para 134(2)).

17 Charities Act 1993 s 43(5) (amended by the Charities Act 2006 Sch 8 para 134(3)).

18 Charities Act 1993 s 43(6)(a) (amended by the Charities Act 2006 Sch 8 para 134(4)).

19 Charities Act 1993 s 43(6)(b) (amended by the Charities Act 2006 Sch 8 para 134(4)).

20 As to the Tribunal see PARA 573 et seq.

21 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

22 Charities Act 1993 s 2A(4)(a), Sch 1C, Table Col 3 (as added: see note 21).

23 See the Charities Act 1993 s 46(1). As to exempt charities see PARAS 315-317.

24 le under the Charities Act 1993 s 3A(2)(d): see PARA 305.

25 See the Charities Act 1993 s 46(3); and PARA 375.

26 le, in relation to financial years beginning on or after 6 April 2008, the Companies Act 2006 Pt 16: see the Charities Act 1993 s 43(9) (substituted by SI 2008/527; and amended by SI 2008/948). As to the meaning of 'company' see PARA 227.

27 See the Charities Act 1993 s 43(10) (added by SI 2005/1074). As to English National Health Service charities see PARA 351. As to Welsh National Health Service charities see PARA 352.

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351. Annual audit or examination of charity accounts: English National Health Service charities.

In relation to the financial year¹ of a charity where, at any time in the year, the charity is an English National Health Service charity² and the charity meets the financial threshold so as to require an audit³, the accounts of the charity for that financial year must be audited by a person appointed by the Audit Commission⁴.

In any other case, the accounts of the charity for that financial year must, at the election of the Audit Commission, be audited by a person appointed by the Audit Commission or examined by a person so appointed⁵.

The Comptroller and Auditor General may at any time examine and inspect the accounts of such a charity for the financial year, any records relating to those accounts and any report of a person so appointed to audit or examine those accounts⁶.

1 le in relation to financial years starting on or after 1 April 2004: see the Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005, SI 2005/1074, art 1(2). As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

2 Charities Act 1993 s 43A(1) (added by SI 2005/1074). 'English National Health Service charity' means a charitable trust, the trustees of which are: (1) a Strategic Health Authority; (2) a Primary Care Trust; (3) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England; (4) trustees appointed in pursuance of the National Health Service Act 2006 Sch 4 para 10 for a National Health Service trust falling within head (3); (5) special trustees appointed in pursuance of the National Health Services Reorganisation Act 1973 s 29(1), the National Health Service Act 1977 s 95(1) and the National Health Service Act 2006 s 212(1) for such a National Health Service trust; or (6) trustees for a Primary Care Trust appointed in pursuance of the National Health Service Act 2006 Sch 3 para 12: Charities Act 1993 s 43A(7) (added by SI 2005/1074; and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 161).

3 le where the Charities Act 1993 s 43(1)(a) or (b) is satisfied; see PARA 350.

4 Charities Act 1993 s 43A(2) (as added (see note 2); and amended by the Charities Act 2006 Sch 8 para 135(2)). 'Audit Commission' means the Audit Commission for Local Authorities and the National Health Services in England: Charities Act 1993 s 43A(7) (added by SI 2005/1074; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)(i), Sch 18(9) para 1). The appointment of auditors by the Commission is governed by the Audit Commission Act 1998 s 3 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 758): see the Charities Act 1993 s 43A(4) (as so added). The duties of an auditor carrying out an audit of the accounts of a charity are, in the case of an audit carried out under s 43A, specified under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 27 (see PARA 356): reg 20. As to when an auditor appointed under the Charities Act 1993 s 43A(2) or (3)(a) ceases to hold office see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 35; and PARA 361. As to the examination of the accounts of England and Welsh National Health Service Charities see reg 32; and PARA 363.

5 Charities Act 1993 s 43A(3) (as added: see note 2). The Charity Commission may give such directions as it thinks appropriate with respect to the carrying out of an examination and any such directions may either be of general application or apply to a particular charity only: Charities Act 1993 s 43A(5) (as so added; and amended by the Charities Act 2006 Sch 8 para 135(3)). The duties of an examiner with respect to the making of a report in respect of an examination carried out by him under the Charities Act 1993 s 43A are specified in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32 (see PARA 363): reg 20.

6 Charities Act 1993 s 43A(6) (as so added: see note 2).

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352. Annual audit or examination of charity accounts: Welsh National Health Service charities.

In relation to the financial year¹ of a charity where, at any time in the year, the charity is a Welsh National Health Service charity², and the charity meets the financial threshold so as to require an audit³, the accounts of the charity for that financial year must be audited by the Auditor General for Wales⁴. In any other case, the accounts of the charity for that financial year must, at the election of the Auditor General for Wales, be audited or examined by the Auditor General for Wales⁵.

1 In relation to financial years starting on or after 1 April 2004: see the Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005, SI 2005/1074, art 1(2). As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

2 Charities Act 1993 s 43B(1) (added by SI 2005/1074). 'Welsh National Health Service charity' means a charitable trust, the trustees of which are: (1) a Local Health Board; (2) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales; (3) trustees appointed in pursuance of the National Health Service (Wales) Act 2006 Sch 3 para 10 for a National Health Service trust falling within head (2); or (4) special trustees appointed in pursuance of the Health Services Reorganisation Act 1973 s 29(1), the National Health Service Act 1977 s 95(1) and the National Health Service (Wales) Act 2006 s 160(1) for such a National Health Service trust: Charities Act 1993 s 43B(4) (added by SI 2005/1074; and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 162). References in the Charities Act 1993 to an auditor or an examiner have effect in relation to s 43B as references to the Auditor General for Wales acting under s 43B as an auditor or examiner: s 43B(5) (as so added).

3 In relation to financial years starting on or after 1 April 2004: see PARA 350.

4 Charities Act 1993 s 43B(2) (as added (see note 2); and amended by the Charities Act 2006 Sch 8 para 136(1), (2)). The duties of an auditor carrying out an audit of the accounts of a charity are, in the case of an audit carried out under the Charities Act 1993 s 43B, specified under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 27 (see PARA 356): reg 20.

5 Charities Act 1993 s 43B(3) (as added: see note 2). The duties of an examiner with respect to the making of a report in respect of an examination carried out by him under s 43B are specified in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32 (see PARA 363): reg 20.

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353. Annual audit of group accounts: larger groups.

Where group accounts¹ are prepared for a financial year² of a parent charity³ and either: (1) the aggregate gross income of the group in that year exceeds £500,000⁴; or (2) the aggregate gross income of the group in that year exceeds £500,000⁵ and at the end of the year the aggregate value of the assets of the group, before deduction of liabilities, exceeds the relevant assets threshold⁶, then the group accounts for that year must be audited by a person who is eligible⁷ to audit the charity⁸.

This requirement also applies where group accounts are prepared for a financial year of a parent charity and the appropriate audit provision⁹ applies in relation to the parent charity's own accounts for that year¹⁰.

Where it appears to the Charity Commission that such auditing has not been complied with in relation to that year within ten months from the end of that year, the Commission may by order require the group accounts for that year to be audited by a person who is either eligible for appointment as a statutory auditor or is a member of a body for the time being specified in regulations and is under the rules of that body eligible for appointment as auditor of the charity; and if it makes such an order, the auditor must be a person appointed by the Commission¹¹.

The expenses of such an audit are recoverable on the same terms as an audit made in pursuance of an order by the Commission under the statutory provisions¹² for charity accounts¹³.

If the audit requirement described above applies in relation to a financial year of a parent charity, the appropriate audit provision¹⁴ applies in relation to the parent charity's own accounts for that year, whether or not it would otherwise so apply¹⁵; save where that parent charity is a company and its own accounts for that year are not required to be audited in accordance with the relevant provisions of the companies legislation¹⁶ in which case the standard auditing provision under the Charities Act 1993¹⁷ applies in relation to those accounts, whether or not it would otherwise so apply¹⁸.

1 As to group accounts see PARA 337.

2 As to the meaning of 'financial year' see PARA 338 note 4.

3 I.e. under the Charities Act 1993 Sch 5A para 3(2) (see PARA 337). As to the meaning of 'parent charity' see the Charities Act 1993 Sch 5A para 1; and PARA 337 note 2 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

4 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 29; and the Charities Act 1993 s 49A, Sch 5A para 6(2)(a) (added by the Charities Act 2006 Sch 6).

5 See note 4.

6 'Relevant assets threshold' is a reference to the sum prescribed by regulations made by the Minister: Charities Act 1993 s 49A, Sch 5A para 6(2)(b) (added by the Charities Act 2006 Sch 6). At the date at which this volume states the law no such sum had been prescribed.

7 I.e. under the Charities Act 1993 s 43(2)(a) or (b) (see PARA 350) or, in the case of an English National Health Service charity, by a person appointed by the Audit Commission (see PARA 351) or, in the case of a Welsh National Health Service Charity, the Auditor General for Wales (see PARA 352): see the Charities Act 1993 s 49A, Sch 5A para 6(1), (4), (7) (as added: see note 6).

In the case of an English National Health Charity, the Comptroller and Auditor General may at any time examine and inspect the accounts of the charity for the financial year, any records relating to those accounts, and any report of a person so appointed to audit or examine those accounts: see the Charities Act 1993 s 49A, Sch 5A para 6(7) (as so added).

8 See the Charities Act 1993 Sch 5A para 6(1), (2), (4) (as added: see note 4). The duties of an auditor carrying out an audit of the group accounts of a parent charity under Sch 5A para 6 are specified in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30 (see PARA 359): reg 21.

9 'Appropriate audit provision', in relation to a financial year of a parent charity, means the Charities Act 1993 s 43(2) (see PARA 350) or, in the case of an English National Health Charity s 43(2), or in the case of a Welsh National Health Charity s 43B, or if the parent charity is a company, either s 43(2) or the Companies Act 2006 Pt 16 as the case may be: Charities Act 1993 s 49A, Sch 5A para 6(9) (as added (see note 6); and amended by SI 2008/527).

10 Charities Act 1993 s 49A, Sch 5A para 6(3) (as added: see note 6).

11 See the Charities Act 1993 s 49A, Sch 5A para 6(5) (as added: see note 6).

12 Ie under the Charities Act 1993 s 43(6), reading the reference in s 43 to the funds of the charity as a reference to the funds of the parent charity: Sch 5A para 6(6) (as added: see note 6).

13 See the Charities Act 1993 Sch 5A para 6(6) (as added: see note 6).

14 As to the meaning of 'appropriate audit provision' see note 9.

15 Charities Act 1993 Sch 5A para 6(8)(a) (as added (see note 6); substituted by SI 2008/527).

16 Ie under the Companies Act 2006 Pt 16 (see **COMPANIES**).

17 Ie under the Charities Act 1993 s 43(2): see PARA 350.

18 Charities Act 1993 s 49A, Sch 5A para 6(8)(b) (as substituted: see note 15).

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354. Annual audit or independent examination of group accounts: smaller groups.

Where group accounts¹ are prepared for a financial year² of a parent charity³ and the thresholds to trigger an audit⁴ are not exceeded then the provisions for the charity trustees⁵ to elect either an independent examination or require an audit apply as they apply⁶ to standard accounts⁷. However if the charity is an English National Health Service Charity or a Welsh National Health Service Charity⁸ then the appropriate statutory provisions⁹ as to the election between examination and audit apply¹⁰.

If the group accounts for a financial year of a parent charity other than an English National Health Service Charity or a Welsh National Health Service Charity are to be examined or audited in accordance with the provisions described above, then the provisions for the charity trustees to elect either an independent examination or an audit apply in relation to the parent charity's own accounts for that year, whether or not they would otherwise so apply¹¹.

1 As to group accounts see PARA 337.

2 As to the meaning of 'financial year' see PARA 338 note 4.

3 Ie a parent charity under the Charities Act 1993 Sch 5A para 3(2). As to the meaning of 'parent charity' see PARA 337 note 2.

4 Ie the Charities Act 1993 Sch 5A para 6 does not apply. As to the relevant thresholds see PARA 353 text and notes 4-6.

5 As to the meaning of 'charity trustees' see PARA 1 note 10.

6 le under the Charities Act 1993 s 43(3)-(7) (see PARA 350). For these purposes, in s 43(3)-(7) any reference to the charity trustees of the charity is to be construed as a reference to the charity trustees of the parent charity, any reference to the charity's gross income in the financial year in question is to be construed as a reference to the aggregate gross income of the group in that year, and any reference to the funds of the charity is to be construed as a reference to the funds of the parent charity: see s 49A, Sch 5A para 7(1), (3) (s 49A added by the Charities Act 2006 s 30(1); and the Charities Act 1993 Sch 5A added by the Charities Act 2006 Sch 6).

7 See the Charities Act 1993 s 49A, Sch 5A para 7(1), (2) (as added: see note 6).

8 le the Charities Act 1993 ss 43A, 43B, as appropriate, apply (see PARAS 351-352).

9 le the Charities Act 1993 s 43A(3)-(6) or s 43B(3), as appropriate, apply (see PARAS 351-352).

10 See the Charities Act 1993 Sch 5A para 7(1), (4), (5) (as added: see note 6). Nothing in these provisions affects the operation of the appropriate statutory provisions as to the election between examination and audit in relation to the parent charity's own accounts for the financial year in question: Sch 5A para 7(1), (7) (as so added).

11 Charities Act 1993 Sch 5A para 7(1), (6) (as added: see note 6).

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355. Regulations and supplementary provisions relating to audits and examinations.

The Minister¹ may by regulations make provision²:

- 180 (1) specifying bodies whose members may be eligible³ for appointment as auditor of a charity⁴;
- 181 (2) with respect to the duties of an auditor⁵, including provision with respect to the making by him of a report on the statement of accounts⁶, or the account and statement⁷, or on company accounts prepared by the director of a company⁸, as the case may be⁹;
- 182 (3) with respect to the making by an independent examiner or examiner¹⁰ of a report in respect of an examination¹¹ carried out by him¹²;
- 183 (4) conferring on such an auditor or on an independent examiner or examiner a right of access with respect to books, documents¹³ and other records, however kept, which relate to the charity concerned¹⁴ or, for group accounts, to any member of the group¹⁵;
- 184 (5) entitling such an auditor or an independent examiner or examiner to require information and explanations from past or present charity trustees or trustees for the charity, or from past or present officers or employees of the charity¹⁶ or, for group accounts, of any member of the group¹⁷;
- 185 (6) enabling the Charity Commission¹⁸, in circumstances specified in the regulations, to dispense with the requirements for an audit or examination¹⁹ in the case of a particular charity or in the case of any particular financial year of a charity²⁰.

If any person fails to afford to an auditor or an independent examiner any facility to which he is entitled in respect of head (4) or (5) above, the Commission may give him or the charity

trustees for the time being of the charity concerned, such directions as it thinks appropriate for securing that the default is made good²¹.

An appeal against such an order of the Commission, or a decision not to make such an order, lies to the Tribunal²² at the instance of the Attorney General, the charity trustees of the charity, the charity itself (if a body corporate), the auditor, independent examiner or examiner (in the case of a decision not to make an order), and any other person who is or may be affected by the order²³. The Tribunal has the power to do any of the following: (a) quash the order; (b) substitute for the order any other order which could have been made by the Commission; (c) add anything to the order which could have been contained in an order made by the Commission²⁴.

The above provisions do not apply to an exempt charity²⁵ or certain charities which are not required to be registered²⁶, and are not registered²⁷.

1 As to the Minister see PARA 580.

2 Charities Act 1993 s 44(1) (amended by SI 2006/2951). In the exercise of the power conferred by the Charities Act 1993 s 44, the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, apply in respect of a financial year of a charity which begins on or after 1 April 2008, and the Charities (Accounts and Reports) Regulations 2005, SI 2005/572, continue to apply in respect of a financial year of a charity before this date: see PARA 336 note 6.

Before making any regulations under the Charities Act 1993 s 44 the Minister must consult such persons or bodies or persons as he considers appropriate: s 86(4) (amended by SI 2006/2951).

3 Ie for the purposes of the Charities Act 1993 s 43(2)(b): see PARA 350.

4 Charities Act 1993 s 44(1)(a).

5 Ie the duties of an auditor carrying out an audit under the Charities Act 1993 Sch 5A para 6 or ss 43, 43A-43B (see PARAS 350-352), as applied by Sch 5A para 7: see s 49A, Sch 5A para 8(1), (2)(a) (Sch 5A added by the Charities Act 2006 Sch 6). See also PARA 354.

6 Ie for the financial year in question under the Charities Act 1993 s 42(1): see PARA 336. In the case of group accounts, 'statement of accounts' is to be construed as a reference to group accounts prepared for a financial year under the relevant statutory provisions: s 49A, Sch 5A para 8(1), (2)(b) (as added: see note 5). As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4. As to group accounts see PARA 337.

7 Ie for the financial year in question under the Charities Act 1993 s 42(3): see PARA 336.

8 Ie accounts prepared under the Companies Act 2006 s 394 (see **COMPANIES**).

9 Charities Act 1993 s 44(1)(b) (amended by the Charities Act 2006 Sch 8 para 137(2)(a); SI 2008/527; and SI 2008/948).

10 As to the meaning of 'independent examiner' see PARA 350 note 10.

11 Ie an examination under the Charities Act 1993 ss 43, 43A, 43B (see PARAS 350-352). This includes the examination of accounts as they apply to smaller group accounts: see s 49A, Sch 5A para 8(1), (2)(c) (as added: see note 6). See also PARA 354.

12 See the Charities Act 1993 s 44(1)(c) (substituted by the Charities Act 2006 Sch 8 para 137(2)(b)).

13 As to the meaning of 'document' see PARA 260 note 2.

14 Charities Act 1993 s 44(1)(d) (amended by the Charities Act 2006 Sch 8 para 137(2)(c)).

15 See the Charities Act 1993 s 49A, Sch 5A para 8(1), (2)(d) (as added: see note 5).

16 Charities Act 1993 s 44(1)(e) (amended by the Charities Act 2006 Sch 8 para 137(2)(d)). In relation to group accounts, without prejudice to the generality of this provision, regulations made under head (5) in the text may make provision corresponding or similar to any provision made by the Companies Act 2006 ss 499-500 (see **COMPANIES**) in connection with the rights exercisable by an auditor of a company in relation to a

subsidiary undertaking of a company: Charities Act 2006 s 49A, Sch 5A para 8(3) (as added (see note 5); and amended by SI 2008/948).

17 Charities Act 1993 s 49A, Sch 5A para 8(1), (2)(d) (as added: see note 5).

18 As to the Charity Commission see PARAS 538-572.

19 le under the Charities Act 1993 s 43(2), (3) (see PARA 350) or, in the case of group accounts, under Sch 5A para 6(4)(a) or 7(2) (see PARAS 353-354): s 49A, Sch 5A para 8(1), (2)(e) (as added: see note 5).

20 Charities Act 1993 s 44(1)(f) (amended by the Charities Act 2006 Sch 8 para 137(2)(d)).

21 Charities Act 1993 ss 44(2), 49A, Sch 5A para 8(1), (4) (s 49A and Sch 5A as added (see note 5); s 44(2) amended by the Charities Act 2006 Sch 8 para 137(3)). A person guilty of disobedience to an order of the Commission made under the Charities Act 1993 s 44(2) may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court: s 88 (amended by the Charities Act 2006 Sch 8 para 167(2)); and see PARA 551.

22 As to the Tribunal see PARA 573 et seq.

23 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

24 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 23).

25 Charities Act 1993 s 46(1). As to exempt charities see PARAS 315-317.

26 le under the Charities Act 1993 s 3A(2)(d): see PARA 305.

27 See the Charities Act 1993 s 46(3) (substituted by the Charities Act 2006 Sch 8 para 139(1), (3)). See also PARA 375.

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356. Auditor's report on statement of accounts.

Where a statement of accounts has been prepared¹ for the financial year² in question, the auditor carrying out the audit of the accounts of a charity³ must make a report on that statement to the charity trustees⁴.

The report must (1) state the name and address of the auditor and the name of the charity concerned⁵; (2) be signed by him or, where the office of auditor is held by a body corporate or partnership, in its name by a person authorised to sign on its behalf⁶; (3) state that the auditor falls within certain statutory requirements⁷; (4) be dated and specify the financial year in respect of which the accounts to which it relates have been prepared⁸; and (5) specify that it is a report in respect of an audit carried out under the statutory provisions⁹ relating to annual audits or examinations of charity accounts¹⁰.

The report must also state whether in the auditor's opinion the statement of accounts complies with the relevant statutory requirements¹¹ and, in particular, whether the balance sheet gives a true and fair view of the state of affairs of the charity at the end of the relevant financial year and whether the statutory requirements¹² as to the true and fair view are satisfied¹³.

Where the auditor has formed the opinion:

- 186 (a) that accounting records have not been kept in respect of the charity in accordance with the statutory duty¹⁴; or

- 187 (b) that the statement of accounts does not accord with those records¹⁵; or
- 188 (c) that any information contained in the statement of accounts is inconsistent in any material respect with any report of the charity trustees prepared in accordance with the statutory provisions¹⁶ in respect of the financial year in question¹⁷; or
- 189 (d) that any information or explanation to which he is entitled¹⁸ has not been afforded to him¹⁹,

the auditor's report must contain a statement of the opinion he has formed and of his grounds for forming it²⁰.

The auditor must, in preparing his report, carry out such investigations as will enable him to form an opinion as to certain specified matters²¹.

1 Ie under the Charities Act 1993 s 42(1) (see PARA 336).

2 As to the meaning of 'financial year' see PARA 338 note 4.

3 Ie under the Charities Act 1993 s 43 (see PARA 350). Under certain circumstances, the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24 also applies (subject to the modifications mentioned in the relevant notes below) to the duties of an auditor carrying out an audit of the accounts of an English National Health Service Charity under the Charities Act 1993 s 43A (see PARA 351) or the Auditor General for Wales carrying out an audit of a Welsh National Health Service Charity under s 43B (see PARA 352): see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, regs 27(1), 28(1). Such circumstances are where: (1) the accounts of the charity in respect of the relevant financial year are required to be audited by the Charities Act 1993 s 43A(2) or s 43B(2), as appropriate; or (2) a statement of accounts has been prepared as required under s 42(1) for the relevant financial year: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, regs 27(2), 28(2). As to the meaning of 'charity' see PARA 1. As to English National Health Service Charities see PARA 351. As to Welsh National Health Service Charities see PARA 352.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1). As to the meaning of 'charity trustees' see PARA 1 note 10. These provisions apply to financial years beginning on or after 1 April 2008: see PARA 336 note 6. In the case of an auditor appointed by the Charity Commission, any report required must instead be made to the Commission: reg 36(1). This does not apply in the case of an English or Welsh National Health Service Charity: reg 36(2).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(a). This statement is not required of the Auditor General for Wales in the case of a Welsh National Health Service Charity: see reg 28(3)(a).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(b).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(c). The statutory requirements referred to in the text are the requirements of the Charities Act 1993 s 43(2)(a), or as the case may be, s 43(2)(b) (see PARA 350). However in the case of an English National Health Service Charity, the requirements are s 43A(2) or as the case may be, s 43(3)(a): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 27(3)(a). This statement is not required of the Auditor General of Wales in the case of a Welsh National Health Service Charity: reg 28(3)(b).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(d).

9 Ie under the Charities Act 1993 s 43 (see PARA 350) or, in the case of an English National Health Service Charity, s 43A (see PARA 351) or, in the case of a Welsh National Health Service Charity, s 43B (see PARA 352), and in accordance with regulations made under s 44 (see PARA 355): see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, regs 24(1)(e), 27(3)(b), 28(3)(b). Note that reg 27(3)(b) purports to amend reg 24(1)(d); however, it is submitted that this should instead refer to reg 24(1)(e).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(e).

11 Ie the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6, 7 or 8 (see PARAS 339-342) as relevant: reg 24(1)(f)(i).

12 These requirements are as follows: (1) in the case of a statement of accounts prepared by the charity trustees of an investment fund (ie one to which the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6 applies (see PARA 342)), that the statement of total return gives a true and fair view of the

incoming resources and application of the resources of the investment fund in the relevant financial year, and the statement of changes in net assets gives a true and fair view of the movements in the net assets of the investment fund between their position as at the beginning of the relevant financial year; (2) in the case of a special case charity (ie one to which reg 7 applies (see PARA 341)), that the income and expenditure account gives a true and fair view of the income and expenditure of the charity in the financial year in question; and (3) in the case of other charities (ie one to which reg 8 applies (see PARA 339)), that the statement of financial activities gives a true and fair view of the incoming resources and application of the resources of the charity in the relevant financial year: reg 24(2).

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(f)(ii).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(g)(i). The statutory duty referred to in the text is the duty in accordance with the Charities Act 1993 s 41 (see PARA 335).

15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(g)(ii).

16 Ie under the Charities Act 1993 s 45: see PARA 365.

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(g)(iii).

18 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33: see PARA 362.

19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(g)(iv).

20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(1)(g).

21 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 24(3). The matters specified are those in reg 24(1)(f) (see the text and notes 13), and reg 24(1)(g) (see the text and notes 14).

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357. Auditor's report on individual accounts under the Companies Act.

Where individual accounts have been prepared by the charity trustees¹ of a charity which is a company under the relevant legislation², the duties of an auditor carrying out an audit of those accounts include the duty to make a report on those accounts to the charity trustees³.

The report must (1) state the name and address of the auditor and the name of the charity concerned⁴; (2) be signed by him or, where the office of auditor is held by a body corporate or partnership, in its name by a person authorised to sign on its behalf⁵; (3) state that the auditor is a person who falls within certain statutory requirements⁶; (4) be dated and specify the financial year in respect of which the accounts to which it relates have been prepared⁷; (5) confirm that the accounts were not required to be audited in accordance with the relevant company provisions⁸; (6) specify that it is a report in respect of an audit carried out under the statutory provisions⁹ relating to annual audits or examinations of charity accounts¹⁰; and (7) state whether, in the auditor's opinion: (a) the company's individual accounts comply with the statutory accounting requirements¹¹ and, in particular, whether the income and expenditure account gives a true and fair view of the income and expenditure of the charity for the relevant financial year and whether the balance sheet gives a true and fair view of the state of affairs of the charity as at the end of that year¹²; (b) in any case where the charity has prepared an additional statement of financial activities, that statement gives a true and fair view of the charity's incoming resources and application of resources in the relevant financial year¹³; and (c) in any case where the accounts state that they have been prepared in accordance with the methods and principles in the *Statement of Recommended Practice for Accounting and Reporting by Charities* (the 'SORP')¹⁴, those methods and principles have been followed¹⁵.

Where the auditor has formed the opinion:

- 190 (i) that accounting records have not been kept in respect of the charity in accordance with the statutory provisions¹⁶;
- 191 (ii) that the charity's individual accounts do not accord with those records¹⁷;
- 192 (iii) that any information contained in those accounts is inconsistent in any material respect with any report of the charity trustees prepared in accordance with the statutory provisions¹⁸ in respect of the relevant financial year¹⁹;
- 193 (iv) that any information or explanation to which he is entitled²⁰ has not been afforded to him²¹,

the auditor's report must contain a statement of the opinion he has formed and of his grounds for forming it²².

The auditor must, in preparing his report, carry out such investigations as will enable him to form an opinion as to certain specified matters²³.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 The Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25 refers to the Companies Act 1985 Pt VII Ch 1, however these provisions are repealed. See now the Companies Act 2006 Pt 15; and **COMPANIES**. The duties of an auditor carrying out an audit of the accounts of a charity are, in the case of an audit carried out under the Charities Act 1993 s 43 (see PARA 350), specified, where the auditor is carrying out an audit of individual accounts of a charity that is a charity prepared under the companies legislation, in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25: see reg 20.

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1). These provisions apply to financial years beginning on or after 1 April 2008: see PARA 336 note 6. In the case of an auditor appointed by the Charity Commission, any report required must instead be made to the Commission: reg 36(1).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(a).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(b).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(c). The statutory requirements referred to in the text are the Charities Act 1993 s 43(2)(b) (see PARA 350).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(d).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(e). As to the relevant company provisions see note 2.

9 Ie under the Charities Act 1993 s 43 (see PARA 350) and in accordance with regulations made under s 44 (see PARA 355).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(f).

11 The Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25 refers to the Companies Act 1985 s 226A, however this provision has been repealed. See now the Companies Act 2006 s 396; and **COMPANIES**.

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(g)(i).

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(g)(ii).

14 See PARA 339 note 12.

15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(g)(iii).

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(h)(i). The statutory provisions referred to in reg 25 are the Companies Act 1985 s 221. However s 221 is repealed. See now the Companies Act 2006 ss 386, 387; and **COMPANIES**.

- 17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(h)(iii).
- 18 Ie under the Charities Act 1993 s 45 (see PARA 365) or the Companies Act 1985 s 234. The Companies Act 1985 s 234 has been repealed; see now the Companies Act 2006; and **COMPANIES**.
- 19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(h)(iii).
- 20 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33: see PARA 362.
- 21 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(h)(iv).
- 22 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(1)(h).
- 23 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 25(2). The matters specified are those in reg 25(1)(g) (see the text and notes 12-15), and reg 25(1)(h) (see the text and notes 16-22).

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358. Auditor's report on annual accounts on the receipts and payments basis.

Where a receipts and payments account and statement of assets and liabilities have been prepared¹ for the relevant financial year², the auditor must make a report on that account and statement to the charity trustees³.

The report must: (1) state the name and address of the auditor and the name of the charity concerned⁴; (2) be signed by him or, where the office of auditor is held by a body corporate or partnership, in its name by a person authorised to sign on its behalf⁵; (3) state that the auditor falls within certain statutory requirements⁶; (4) be dated and specify the financial year in respect of which the accounts to which it relates have been prepared⁷; and (5) specify that it is a report in respect of an audit carried out under the statutory provisions⁸ relating to annual audits or examinations of charity accounts⁹.

The report must also state whether in the auditor's opinion the amount and statement properly present the receipts and payments of the charity for the financial year in question and its assets and liabilities as at the end of that year and whether in his opinion the account and statement adequately distinguish any material special trust or other restricted fund¹⁰ of the charity¹¹.

Where the auditor has formed the opinion:

- 194 (a) that accounting records have not been kept in respect of the charity in accordance with the statutory¹² duty¹³; or
- 195 (b) that the account and statement do not accord with those records¹⁴; or
- 196 (c) that any information or explanation to which he is entitled¹⁵ has not been afforded to him¹⁶,

the report must contain a statement of that opinion and of his grounds for forming it¹⁷.

The auditor must, in preparing his report, carry out such investigations as will enable him to form an opinion as to certain specified matters¹⁸.

1 Ie under the Charities Act 1993 s 42(3): see PARA 336.

2 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4. The provisions apply to financial years beginning on or after 1 April 2008: see PARA 336 note 6.

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1). These regulations also apply in the case of an English National Health Service Charity in respect of an auditor appointed by the Audit Commission (ie under the Charities Act 1993 s 43A(3)(a)) (Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 27(1), (4)); and in the case of a Welsh National Health Service Charity in respect of the Auditor General for Wales where he has elected under the Charities Act 1993 s 43B(3) that the accounts of the charity be audited (Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 28(1), (4)). In the case of an auditor appointed by the Charity Commission, any report required must instead be made to the Commission, except in the case of an English or Welsh National Health Service Charity: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 36. As to the meaning of 'charity trustees' see PARA 1 note 10. As to English National Health Service Charities see PARA 351. As to Welsh National Health Service Charities see PARA 352.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(a). This statement is not required of the Auditor General for Wales in the case of a Welsh National Health Service Charity: see reg 28(5)(a).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(b).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(c). The statutory requirements referred to in the text are the requirements of the Charities Act 1993 s 43(2)(a), or as the case may be, s 43(2)(b) (see PARA 350) or, in the case of an English National Health Service Charity, s 43A(3)(a): Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 27(5). This statement is not required of the Auditor General of Wales in the case of a Welsh National Health Service Charity: see reg 28(5)(b).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(d).

8 Ie under the Charities Act 1993 s 43 (see PARA 350) or, in the case of an English National Health Service Charity, s 43A (see PARA 351) or, in the case of a Welsh National Health Service Charity, s 43B (see PARA 352), and in accordance with regulations made under s 44 (see PARA 355): see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, regs 26(1)(e), 27(5)(b), 28(5)(c). Note that in the Queen's Printer copy reg 27(5)(b) is labelled reg 27(6) and purports to amend reg 26(1)(d). It is submitted this is in error.

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(e).

10 As to the meaning of 'restricted fund' see PARA 340 note 15.

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(f).

12 Ie under Charities Act 1993 s 41: see PARA 335.

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(g)(i).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(g)(ii).

15 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33: see PARA 362.

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(g)(iii).

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(1)(g).

18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 26(2). The matters specified are those in reg 26(1)(f) (see the text and notes 11), and reg 26(1)(g) (see the text and notes 13-17).

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359. Auditor's report on group accounts.

Where group accounts¹ are required to be audited² the auditor must make a report on those accounts to the charity trustees of the parent charity³. The report must: (1) state the name and address of the auditor and the name of the parent charity concerned⁴; (2) be signed by him or, where the office of auditor is held by a body corporate or partnership, in its name by a person authorised to sign on its behalf⁵; (3) state that the auditor falls within certain statutory requirements⁶; (4) be dated and specify the financial year in respect of which the accounts to which it relates have been prepared⁷; (5) where the parent charity is a company, confirm that the charity trustees were not required under certain company legislation⁸ to prepare group accounts for that year⁹; and (6) specify that it is a report in respect of an audit carried out under the statutory provisions¹⁰ relating to group accounts¹¹.

In the case of a parent charity that is an investment fund¹², the report must also state whether, in the auditor's opinion, the report complies with the appropriate requirements as to form and content¹³, and in particular whether the consolidated statement of total return gives a true and fair view of the total return of the parent charity and its subsidiary undertakings during the relevant financial year, the consolidated statement of changes in net assets gives a true and fair view of the changes in the net assets of the parent charity and its subsidiary undertakings during the relevant financial year, and the consolidated balance sheet gives a true and fair view of the state of affairs of the parent charity and its subsidiary undertakings at the end of the relevant financial year¹⁴.

In the case of a parent charity that is a special case charity¹⁵, the report must also state whether, in the auditor's opinion, the report complies with the appropriate requirements as to form and content¹⁶, and in particular whether the consolidated balance sheet gives a true and fair view of the state of affairs of the parent charity and its subsidiary undertakings at the end of the relevant financial year, and the consolidated income and expenditure account gives a true and fair view of the income and expenditure of the parent charity and its subsidiary undertakings as a whole in the relevant financial year¹⁷.

In the case of any other parent charity¹⁸, the report must also state whether, in the auditor's opinion, the report complies with the appropriate requirements as to form and content¹⁹, and in particular whether the consolidated balance sheet gives a true and fair view of the state of affairs of the parent charity and its subsidiary undertakings as at the end of the relevant financial year, and the consolidated statement of financial activities gives a true and fair view of the total incoming resources of the parent charity and its subsidiary undertakings and the movements in the total resources of the group in the relevant financial year²⁰.

Where the auditor has formed the opinion that any information contained in the group accounts is inconsistent in any material respect with any report of the charity trustees prepared in accordance with the statutory provisions²¹, or that any information or explanation to which he is entitled has not been afforded to him²², the auditor's report must contain a statement of that opinion and of the grounds for forming it²³.

The auditor must, in preparing his report carry out such investigations as will enable him to form an opinion as to certain specified matters²⁴.

1 As to group accounts see PARA 337.

2 Ie under the Charities Act 1993 s 49A, Sch 5A para 6 (see PARA 353).

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1). As to the meaning of 'parent charity' see the Charities Act 1993 Sch 5A para 1; and PARA 337 and note 2 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(a).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(b).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(c)(i). The statutory requirements referred to in the text are the requirements of the Charities Act 1993 s 43(2)(a), or as the case may be, s 43(2)(b) (see PARA 350). These requirements do not apply where the audit is of an English National Health Service Charity, in which case the report must instead state that the auditor was appointed by the Audit Commission, or where the audit is of a Welsh National Health Service Charity, in which case the report must instead state that the auditor is the Auditor General for Wales: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(c)(ii), (iii).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(d).

8 The legislation referred to in the text is the Companies Act 1985 s 227. However s 227 has been repealed. See now the Companies Act 2006 ss 399, 403; and **COMPANIES**.

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(e).

10 Ie under the Charities Act 1993 s 44, Sch 5A para 6 as modified by Sch 5A para 8 (see PARA 337).

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(f).

12 As to the meaning of 'investment fund' see PARA 342 note 2.

13 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 13 (see PARA 349).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(g)(i).

15 As to the meaning of 'special case charity' see PARA 341 note 3.

16 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 14 (see PARA 348).

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(g)(ii).

18 Ie a parent charity that is not an investment fund or a special case charity.

19 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 15 (see PARA 347).

20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(g)(iii).

21 Ie under the Charities Act 1993 s 45 in respect of the relevant financial year (see PARA 365) or, where the parent charity is a company, with the report prepared in respect of that financial year under the Companies Act 1985 s 234. Section 234 has been repealed. See now the Companies Act 2006 s 415; and **COMPANIES**.

22 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33: see PARA 362.

23 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(1)(h).

24 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 30(2). The specified matters are those in reg 30(1)(g), (h): see notes 14-22.

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360. Reports to charity trustees by an independent examiner.

An independent examiner¹ who has carried out an examination of the accounts of a charity² under the statutory provisions providing for independent examination³ must make a report to the charity trustees⁴.

The report must: (1) state the independent examiner's name and address and the name of the charity concerned⁵; (2) be signed by him⁶; (3) be dated and specify the financial year⁷ in respect of which the accounts to which it relates have been prepared⁸; (4) confirm, where the charity

whose accounts are being examined is a company, that the accounts are not required to be audited under the companies legislation⁹; (5) specify, if the gross income exceeds the statutory sum¹⁰, the basis on which he qualifies to act as independent examiner¹¹; (6) state any, or any other, relevant professional qualifications or professional body of which he is a member¹²; (7) state, where the accounts are being examined under a dispensation from the Charity Commission¹³, the date when the Commission dispensed with the audit requirement¹⁴; and (8) specify that it is a report in respect of an examination carried out under the statutory provisions¹⁵ relating to annual audits or examinations of charity accounts and in accordance with any directions given by the Charity Commission¹⁶ which are applicable¹⁷.

The report must also state whether or not any matter has come to the examiner's attention in connection with the examination which gives him reasonable cause to believe that in any material respect¹⁸: (a) accounting records have not been kept in respect of the charity in accordance with the statutory duty¹⁹; (b) the accounts do not accord with those records²⁰; and (c) in the case of an examination of accounts, the statement of accounts²¹ does not comply with any of the relevant statutory requirements²² other than any requirement to give a true and fair view²³.

The report must state whether or not any matter has come to the examiner's attention in connection with the examination to which, in his opinion, attention should be drawn in the report in order to enable a proper understanding of the accounts to be reached²⁴. Further, where certain matters become apparent to the examiner during the course of an examination, the report must contain a statement to that effect²⁵. The relevant matters are that: (i) there has been any material expenditure or action which appears not to be in accordance with the trusts of the charity²⁶; or (ii) any information or explanation to which he is entitled²⁷ has not been afforded to him²⁸; or (iii) in the case of an examination of accounts a statement of which has been prepared²⁹, any information contained in the statement of accounts is inconsistent in any material respect with any report of the charity trustees prepared under the statutory provisions relating to annual reports³⁰ in respect of the financial year in question³¹.

1 As to the meaning of 'independent examiner' see PARA 350 note 10.

2 As to the meaning of 'charity' see PARA 1.

3 Ie under the Charities Act 1993 s 43: see PARA 350.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31. These provisions apply to financial years beginning on or after 1 April 2008: see PARA 336 note 6. As to the meaning of 'charity trustees' see PARA 1 note 10.

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(a).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(b).

7 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(c)(i).

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(c)(ii). The companies legislation referred to in the text is the Companies Act 1985 Pt 7. However Pt 7 has been repealed. See now the Companies Act 2006; and **COMPANIES**.

10 Ie the sum specified in the Charities Act 1993 s 43(3A): see PARA 350 note 10.

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(d).

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(e).

13 Ie the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(3)(b) (see PARA 364). As to the Charity Commission see PARAS 538-572.

- 14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(f). The audit requirement mentioned in the text is the Charities Act 1993 s 43(2) (see PARA 350).
- 15 See note 3.
- 16 Ie under Charities Act 1993 s 43(7)(b): see PARA 350. From time to time, the Charity Commission publishes guidance relating to independent examinations: see eg *CC32: The Independent Examination of Charity Accounts - Examiners' Guide* (October 2008). As to guidance published by the Commission see PARA 542.
- 17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(g).
- 18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(h).
- 19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(h)(i). The statutory duty referred to in the text is a statutory duty under the Charities Act 1993 s 41 (see PARA 335) or, where the charity is a company, the Companies Act 1985 s 221: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(h)(i). The Companies Act 1985 s 221 has been repealed. See now the Companies Act 2006 s 386; and **COMPANIES**.
- 20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(h)(ii).
- 21 Ie as prepared under the Charities Act 1993 s 42(1) (see PARA 336) or under the Companies Act 1985 Pt 7 (repealed: see now Companies Act 2006; and **COMPANIES**). In any case where the accounts under the Companies Act 1985 Pt 7 state they have been prepared in accordance with the *Statement of Recommended Practice for Accounting and Reporting by Charities* (the 'SORP'), the report must also state they have not in fact been prepared in accordance with the methods and principles set out in the SORP: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(h)(iv)(bb).
- 22 As to the relevant statutory requirements see PARAS 339-342.
- 23 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(h)(iii), (iv).
- 24 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(i).
- 25 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(j).
- 26 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(j)(i).
- 27 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32: see PARA 363.
- 28 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(j)(ii).
- 29 Ie under the Charities Act 1993 s 42(1) (see PARA 336) or, in the case of a charitable company, the Companies Act 1985 Pt 7 (repealed: see now the Companies Act 2006; and **COMPANIES**).
- 30 Ie under the Charities Act 1993 s 45 (see PARA 365) and, in the case of a charitable company, the Companies Act 1985 s 234 (repealed: see now the Companies Act 2006 s 415; and **COMPANIES** vol 15 (2009) PARA 816).
- 31 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 31(j)(iii)-(iv).

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361. Communications with Charity Commission and auditors etc.

A person acting as an auditor, independent examiner or examiner appointed by or in relation to a charity¹, a person appointed to audit or report on any group accounts², or a person acting as an auditor of a charitable company³, must immediately make a written report to the Charity Commission⁴, detailing any matter of which he becomes aware in such capacity which relates

to the activities or affairs of the charity or of an institution or body corporate connected with the charity⁵ and which the person has reasonable cause to believe is, or is likely to be, of material significance for the exercise, in relation to the charity of the Commissions functions in relation to the general power to institute inquiries⁶ or the power⁷ to act for the protection of charities⁸. If, in the course of acting as an auditor, independent examiner or examiner appointed by or in relation to a charity⁹ a person becomes aware of any matter which does not appear to him to be one that he is required to report to the Commission¹⁰, but which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions, he may make a report on the matter to the Commission¹¹.

Where the duty or power described above¹² has arisen in relation to a person acting in such capacity¹³, it is not affected by the person subsequently ceasing to act in that capacity¹⁴.

Where a person makes such a report, no duty to which he is subject is to be regarded as contravened merely because of any information or opinion contained in the report¹⁵.

Where an auditor appointed by charity trustees¹⁶ ceases for any reason to hold office he must send a statement to the charity trustees¹⁷. The statement must set out any circumstances connected with his ceasing to hold office which he considers should be brought to their attention or, if he considers that there are no circumstances, a statement that there are none¹⁸. Where the auditor sends a statement containing circumstances to be brought to the attention of the charity trustees, he must also send a copy to the Commission¹⁹.

1 Ie a person appointed under the Charities Act 1993 ss 43, 43A(2) or (3), or the Auditor General for Wales acting under s 43A(2) or (3): s 44A(1) (added by the Charities Act 2006 s 29(1)). See PARAS 350-358.

2 Ie under the Charities Act 1993 s 49A, Sch 5A para 6 or 7 (see PARAS 353-354): see s 49A, Sch 5A para 9(1) (added by the Charities Act 2006 s 30, Sch 6).

3 Ie under the Companies Act 2006 Pt 16 Ch 2 (see **COMPANIES**): see the Charities Act 1993 s 68A(1), (2) (added by the Charities Act 2006 s 33; and amended by SI 2008/527). 'Charitable company' means a charity which is a company: Charities Act 1993 s 68A(3) (as so added).

This duty applies in relation to matters ('pre-commencement matters') of which a person became aware at any time falling before 1 April 2008 and during a financial year ending on or after that day, as well as in relation to matters of which he becomes aware on or after that day; this duty must be complied with in relation to any pre-commencement matters as soon as practicable after 1 April 2008: see the Charities Act 2006 s 75(3), Sch 10 para 10.

4 As to the Charity Commission see PARAS 538-572.

5 As to the meaning of 'charity' see PARA 1. A connected institution or body is an institution which is controlled by, or a body corporate in which a substantial interest is held by, the charity or any one or more of the charity trustees acting in his or their capacity as such: Charities Act 1993 s 44A(6) (as added: see note 1). For these purposes: (1) a person controls an institution if he is able to secure that the affairs of the institution are conducted in accordance with his wishes; and (2) a substantial interest in a body corporate is held if the person or institution in question (a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital; or (b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body: Charities Act 1993 Sch 5 paras 3, 4 (applied by s 44A(7) (as so added)). As to the meanings of 'equity share capital' and 'share' see the Companies Act 2006 ss 548, 540 respectively; and **COMPANIES** (definitions applied by the Charities Act 1993 s 44A(7), Sch 5 para 4(3)). As to the meaning of 'charity trustees' see PARA 1 note 10.

In so far as this provision applies in relation to a person appointed to audit or report on any group accounts, the reference to the charity or any connected institution or body is to be construed as a reference to the parent charity or any of its subsidiary undertakings: s 49A, Sch 5A para 9(1) (as added: see note 2). As to the meaning of 'parent charity' see PARA 337 note 2. As to the meaning of 'subsidiary undertaking' see PARA 337 note 3.

6 Ie under the Charities Act 1993 s 8: see PARAS 554-555.

7 Ie under the Charities Act 1993 s 18: see PARA 561 et seq.

8 Charities Act 1993 s 44A(2) (as added: see note 1). This duty applies in relation to matters ('pre-commencement matters') of which a person became aware at any time falling before 1 April 2008 and during a

financial year ending on or after that day; as well as in relation to matters of which he becomes aware on or after that day; this duty must be complied with in relation to any pre-commencement matters as soon as practicable after 1 April 2008: see the Charities Act 2006 Sch 10 para 8.

- 9 le acting in the capacity mentioned in the Charities Act 1993 s 44A(1).
- 10 le one he is required to report under the Charities Act 1993 s 44A(2).
- 11 Charities Act 1993 s 44A(3) (as added: see note 1).
- 12 le the duty or power under the Charities Act 1993 s 44A(2) or (3).
- 13 le acting in the capacity mentioned in the Charities Act 1993 s 44A(1).
- 14 Charities Act 1993 s 44A(4) (as added: see note 1).
- 15 Charities Act 1993 s 44A(5) (as added: see note 1).
- 16 Or under the Charities Act 1993 s 43A(2) or (3)(a) (see PARA 351).
- 17 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 35(1)(a).
- 18 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 35(1)(a).
- 19 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 35(1)(b).

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362. Access to books, documents and records, and obtaining information and explanations.

A person carrying out an audit or examination of the accounts of a charity¹ has a right of access to any books, documents² and other records (however kept) which relate to the charity³ concerned and which the person concerned considers it necessary to inspect for the purposes of carrying out the audit or examination⁴. Such a person is entitled to require, in the case of the charity concerned, such information and explanations from past or present charity trustees⁵ of, or trustees for, the charity, or from past or present officers⁶ or employees of the charity, as he considers necessary to obtain for the purposes of carrying out the audit or, as the case may be, examination⁷.

An auditor carrying out an audit of the group accounts of a parent charity⁸ also has a right of access to any books, documents and other records (however kept) which relate to any of the subsidiary undertakings⁹ included in group accounts and which the auditor considers it necessary to inspect for the purpose of carrying out the audit¹⁰. He also has the right to require, in the case of any such subsidiary undertaking, such information and explanations from, in the case of a subsidiary undertaking which is a charity, past or present charity trustees of, or trustees for, that charity, and, in the case of any subsidiary undertaking which is not a charity, from the subsidiary undertaking itself and from past or present officers or employees of that undertaking, as he considers it necessary to obtain for the purposes of carrying out the audit¹¹. The auditor has the right to require the charity trustees of the parent charity to take all such steps as are reasonably open to them to obtain from any such subsidiary undertaking such information and explanations as he may reasonably require for the purposes of carrying out the audit¹².

- 1 le under the Charities Act 1993 ss 43, 43A, 43B or Sch 5A para 6: see PARAS 350-358.
- 2 As to the meaning of 'document' see PARA 260 note 2.
- 3 As to the meaning of 'charity' see PARA 1.
- 4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33(1). These provisions apply to financial years beginning on or after 1 April 2008: see PARA 336 note 6.
- 5 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 6 For the purposes of this regulation, 'officer' includes any auditor or other person appointed to scrutinise the accounts of any such undertaking: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33(4).
- 7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33(2).
- 8 le under the Charities Act 1993 Sch 5A para 6: see PARA 353.
- 9 As to the meaning of subsidiary undertaking PARA 337.
- 10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33(3)(a).
- 11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33(3)(b).
- 12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33(3)(c).

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363. Examination of the accounts of English and Welsh National Health Service Charities.

Where a person has carried out an examination of the accounts of an English National Health Service Charity¹, or the Auditor General for Wales has carried out an examination of the accounts of a Welsh National Health Service Charity², that person, or as the case may be the Auditor General for Wales, must make a report to the charity trustees³ which:

- 197 (1) states the name of the charity concerned and, in the case of an examination in respect of an English National Health Service Charity⁴, the name and address of the examiner⁵;
- 198 (2) is signed by him⁶;
- 199 (3) is dated and specified the financial year⁷ in respect of which the accounts to which it relates have been prepared⁸;
- 200 (4) in the case of an examination in respect of an English National Health Service Charity⁹ states any relevant professional qualifications or professional body of which he is a member¹⁰;
- 201 (5) specifies that it is a report in respect of an examination carried out in respect of an English or Welsh National Health Service Charity¹¹, and, in the case of an examination in respect of an English National Health Service Charity¹², in accordance with any directions given by the Commission¹³ which are applicable¹⁴;
- 202 (6) states whether or not any matter has come to the examiner's attention in connection with the examination which gives him reasonable cause to believe that in any material respect accounting records have not been kept in respect of the charity¹⁵; the accounts do not accord with those records; in the case of an examination of a statement of accounts which has been prepared under certain

provisions¹⁶, the statement of accounts does not comply with certain requirements¹⁷, as relevant, other than any requirement to give a true and fair view¹⁸;

203 (7) states whether or not any matter has come to the examiner's or, as the case may be, the Auditor General for Wales', attention in connection with the examination to which, in his opinion, attention should be drawn in the report in order to enable a proper understanding of the accounts to be reached¹⁹;

204 (8) contains a statement as to any of the following matters that has become apparent to the examiner or, as the case may be, the Auditor General for Wales, during the course of the examination, namely, that: (a) there has been any material expenditure or action which appears not to be in accordance with the trusts of the charity; or (b) any information or explanation to which he is entitled²⁰ has not been afforded to him; or (c) in the case of an examination of accounts a statement of which has been prepared²¹, any information contained in the statement of accounts is inconsistent in any material respect with any report of the charity trustees prepared²² in respect of the financial year in question²³.

1 Ie under the Charities Act 1993 s 43A (see PARA 351). As to the meaning of 'English National Health Service Charity' see PARA 351 note 2.

2 Ie under the Charities Act 1993 s 43B (see PARA 352). As to the meaning of 'Welsh National Health Service Charity' see PARA 352 note 2.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Ie an examination under the Charities Act 1993 s 43A (see PARA 351).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(a).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(b).

7 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(c).

9 Ie an examination under the Charities Act 1993 s 43A (see PARA 351).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(d).

11 Ie an examination under the Charities Act 1993 s 43A (see PARA 351) or, as the case may be, s 43B (see PARA 352).

12 Ie an examination under the Charities Act 1993 s 43A (see PARA 351).

13 Ie given under the Charities Act 1993 s 43A(5) (see PARA 351).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(e).

15 Ie in accordance with the Charities Act 1993 s 41 (see PARA 335).

16 Ie in accordance with the Charities Act 1993 s 42(1) (see PARA 336).

17 Ie the requirements of the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 6, 7 or 8 (see PARAS 339-342).

18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(f).

19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(g).

20 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 33 (see PARA 362).

21 Ie under the Charities Act 1993 s 42(1) (see PARA 336).

- 22 le prepared under the Charities Act 1993 s 45 (see PARA 365).
- 23 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 32(h).

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364. Dispensation from audit or examination requirements.

The Charity Commission¹ may, in certain circumstances², dispense with the statutory requirements for the audit or independent examination of charity accounts³ in the case of a particular charity⁴ or in respect of a particular financial year⁵ of a charity⁶.

Such circumstances are where the Commission:

- 205 (1) is satisfied that the accounts of the charity⁷ concerned are required to be audited in accordance with any statutory provision contained in or having effect under an Act of Parliament which, in the opinion of the Commission, imposes requirements which are sufficiently similar to the requirements for the audit of charity accounts under the Charities Act 1993⁸ for those requirements to be dispensed with⁹;
- 206 (2) is satisfied that the accounts of the charity¹⁰ concerned have been audited by the Comptroller and Auditor General or by the Auditor General for Wales¹¹;
- 207 (3) is satisfied that the accounts of the charity concerned for the financial year in question have been or will be audited or, as the case may be, examined in accordance with requirements or arrangements which, in the opinion of the Commission, are sufficiently similar to the statutory requirements for the audit or independent examination of charity accounts¹² applicable to that financial year of that charity for those requirements to be dispensed with¹³;
- 208 (4) considers that, although the financial year in question of the charity concerned is one to which the statutory requirements for the audit of charity accounts apply¹⁴, there are exceptional circumstances which justify the examination of the accounts by an independent examiner instead of their audit in accordance with those requirements¹⁵;
- 209 (5) in the case of group accounts¹⁶, is satisfied that the group accounts of the parent charity concerned for the financial year in question have been, or will be, audited in accordance with requirements or arrangements which, in the opinion of the Commission, are sufficiently similar to the requirements for the audit of group accounts under the Charities Act 1993¹⁷ for those requirements to be dispensed with¹⁸.

The Commission must make it a condition of a dispensation that the charity trustees send to it any report made to the trustees with respect to the accounts of that charity for the relevant financial year of which it requests a copy¹⁹. The Commission may revoke a dispensation if the charity trustees fail to comply with a relevant condition²⁰.

1 As to the Charity Commission see PARAS 538-572.

2 le in the circumstances referred to in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(2)-(5): see the text and notes 7-18.

- 3 le the requirements of the Charities Act 1993 s 43(2), (3) and Sch 5A para 6(4)(a): see PARAS 350, 353.
- 4 As to the meaning of 'charity' see PARA 1.
- 5 As to the meaning of 'financial year' see PARA 217 note 3, 338 note 4.
- 6 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(1). These provisions apply to financial years beginning on or after 1 April 2008: see PARA 336 note 6.
- 7 Or, in the case of group accounts, the parent charity: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(4).
- 8 le under the Charities Act 1993 s 43(2) (see PARA 350) or, in the case of group accounts, Sch 5A para 6(4)(a) (see PARA 353).
- 9 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(2)(a), (4)(a).
- 10 Or, in the case of group accounts, the parent charity: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(4).
- 11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(2)(b), (4)(b). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726. As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 12 le the requirements of the Charities Act 1993 s 43: see PARA 350.
- 13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(3)(a).
- 14 See note 8.
- 15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(3)(b). The Commission must make it a condition of a dispensation granted under reg 34(3)(b) that the charity trustees comply with the requirements of the Charities Act 1993 s 43(3) (see PARA 350) as if they were able to make and had in fact made an election under that section that the accounts of the charity for the relevant financial year be examined by an independent examiner: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(7).
- 16 As to group accounts see PARA 337.
- 17 le the Charities Act 1993 Sch 5A para 6(4)(a): see PARA 353.
- 18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(5).
- 19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(6).
- 20 See the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 34(8). The relevant conditions are those imposed under reg 34(6) and (7).

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H. ANNUAL REPORTS, ANNUAL STATEMENTS AND ANNUAL RETURNS

365. Annual reports and annual statements.

The charity trustees¹ of a charity² (other than an exempt charity³, certain charities⁴ whose gross income does not exceed £5,000 and which are not registered⁵, and certain charities excepted from registration and which are not registered⁶) must prepare an annual report in respect of each financial year⁷ of the charity⁸. The report must contain such a report by the trustees on

the activities of the charity during that year⁹, and such other information relating to the charity or to its trustees or officers¹⁰, as is prescribed by regulations¹¹ made by the Minister¹².

Where in any financial year of a charity its gross income¹³ exceeds £25,000¹⁴, a copy of the annual report required to be so prepared in respect of that year must be transmitted to the Charity Commission by the charity trustees within ten months from the end of that year, or within such longer period as the Commission may for any special reason allow in the case of that report¹⁵. Where in any financial year of a charity its gross income does not exceed £25,000, a copy of the annual report required to be so prepared in respect of that year must, if the Commission so requests, be transmitted to it by the charity trustees: (1) in the case of a request made before the end of seven months from the end of the financial year to which the report relates, within ten months from the end of that year¹⁶; and (2) in the case of a request not so made, within three months from the date of the request¹⁷; or (3) in either case, within such longer period as the Commission may for any special reason allow in the case of that report¹⁸.

Any copy of any annual report transmitted to the Commission under the above provisions must have attached to it a copy of the statement of accounts prepared for the financial year in question¹⁹ or, as the case may be, a copy of the account and statement so prepared²⁰ together with²¹: (a) where the accounts of the charity for that year have been audited²², a copy of the report made by the auditor on that statement of accounts or, as the case may be, on that account and statement²³; (b) where the accounts of the charity for that year have been examined²⁴, a copy of the report made by the person carrying out the examination²⁵. However, this requirement does not apply to a charity which is a company²⁶, and any copy of an annual report transmitted by the charity trustees of such a charity must instead have attached to it a copy of the charity's annual accounts prepared for the financial year in question under the provisions of the Companies Act 2006 which relate to accounts and reports²⁷, together with the following²⁸: (i) where the accounts of the charity for that year have been audited under the provisions of the Companies Act 2006²⁹ a copy of the report made by the auditor on those accounts; or (ii) where the accounts of the charity for that year have been audited³⁰ a copy of the report made by the auditor on those accounts; or (iii) where the accounts of the charity for that year have been examined, a copy of the report made by the person carrying out the examination³¹.

In addition to the statutory requirements³² the Commission requires that an annual report includes a report of those activities undertaken by a charity to further its charitable purposes for the public benefit and a statement by the charity trustees as to whether they have complied with their statutory duty³³ to have regard to public benefit guidance³⁴.

1 As to the meaning of 'charity trustees' see PARA 1 note 10.

2 As to the meaning of 'charity' see PARA 1.

3 See the Charities Act 1993 s 46(1); and PARA 375. As to exempt charities see PARAS 315-317.

4 I.e. those charities which are not also English National Health Service Charities or Welsh National Health Service Charities: see the Charities Act 1993 s 46(3), (3B); and PARA 375. As to the meaning of 'English National Health Service charity' see PARA 351 note 2. As to the meaning of 'Welsh National Health Service charity' see PARA 352 note 2.

5 I.e. a charity that falls with the Charities Act 1993 s 3A(2)(d) (see PARA 305): see s 46(3); and PARA 375.

6 I.e. those charities which fall under the Charities Act 1993 s 3A(2)(b) or (c) but not s 3A(2)(d) (see PARA 305): see s 46(4); and PARA 375.

7 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4. These provisions apply, except where otherwise noted, in relation to any financial year of a charity which begins on or after 27 February 2007.

8 Charities Act 1993 s 45(1) (amended by SI 2006/2951). The charity trustees of a charity must preserve, for at least six years from the end of the financial year to which it relates, any annual report prepared by them under the Charities Act 1993 s 45(1) which they have not been required to transmit to the Charity Commission: s 45(7) (s 45(7), (8) added by the Deregulation and Contracting Out Act 1994 s 29; and amended by the Charities Act 2006 Sch 8 para 138(1), (8)-(9)). Where a charity ceases to exist within the six year period, the obligation to preserve the records continues to be discharged by the last charity trustees of the charity, unless the Commission consents in writing to the records being destroyed or otherwise disposed of: Charities Act 1993 s 41(4) (amended by the Charities Act 2006 Sch 8 para 132); Charities Act 1993 s 45(8) (as so added and amended). As to the Charity Commission see PARAS 538-572.

9 Charities Act 1993 s 45(1)(a).

10 Charities Act 1993 s 45(1)(b).

11 As to the regulations made under the power conferred by the Charities Act 1993 s 45, and the financial years to which they apply, see those noted in PARA 336 note 6.

12 Charities Act 1993 s 45(1) (as amended: see note 8). Before making such any regulations the Minister must consult such persons or bodies of persons as he considers appropriate: s 86(4) (amended by the Charities Act 2006 Sch 7 para 6(b); and SI 2006/2951). As to the making of regulations generally see the Charities Act 1993 s 86; and PARA 584. See also PARA 312 note 6. As to the contents, application of requirements as to annual reports see PARA 367 et seq. Without prejudice to the generality of s 45(1), such regulations may make provision: (1) for any such report under s 45(1)(a) (see the text to note 8) to be prepared in accordance with such principles as are specified or referred to in the regulations; (2) enabling the Charity Commission to dispense with the requirement prescribed by virtue of s 45(1)(b) (see the text to note 10) in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities: s 45(2) (amended by the Charities Act 2006 Sch 8 para 138(2)). As to the Minister see PARA 580.

13 As to the meaning of 'gross income' see PARA 217 note 2.

14 As from a day to be appointed, in the case of a charity which is constituted as a CIO, the requirement imposed by the Charities Act 1993 s 45(3) applies whatever the charity's gross income and s 45(3A) (see text and notes 15-17) does not apply: s 45(3B) (prospectively added by the Charities Act 2006 Sch 7 paras 3, 4). As to CIOs see PARAS 240-253. At the date at which this volume states the law no such day had been appointed.

15 Charities Act 1993 s 45(3) (amended by the Deregulation and Contracting Out Act 1994 s 29; the Charities Act 2006 Sch 8 para 138(3); and SI 2009/508). This threshold applies for any financial year ending on or after 1 April 2009: Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009, SI 2009/508, art 16. For earlier financial years, the threshold is £10,000: Charities Act 1993 s 45(3) (as originally amended by the Deregulation and Contracting Out Act 1994 s 29). The Minister may by order amend the Charities Act 1993 s 45(3) or s 45(3A) by substituting a different sum for the sum for the time being specified there: s 45(9) (added by the Deregulation and Contracting Out Act 1994 s 29; and amended by SI 2006/2951).

If any requirement imposed by s 45(3) or s 45(3A) (see the text and notes 14-16) (taken with s 45(3B), s 45(4) or s 45(5) (see the text and notes 17-28), as the case may require, and also, in the case of group accounts, as applied by Sch 5A para 10(4) and taken with Sch 5A paras 10(5) or 11(2) as applicable (see below PARA 366)) is not complied with, and the specified date of compliance is on or after 1 April 2008 (see the Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309, art 11(1)), each person who immediately before the date for compliance specified in the provision in question was a charity trustee of the charity is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, a daily default fine not exceeding 10% of level 4 on the standard scale for so long as the person in question remains a charity trustee of the charity: s 49(1), (2) (substituted by the Charities Act 2006 Sch 8 para 142); extended to cover group accounts by the Charities Act 1993 Sch 5A para 14(1)-(3) (added by the Charities Act 2006 Sch 6)). However, it is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirement in question would be complied with in time: Charities Act 1993 s 49(3) (substituted by the Charities Act 2006 Sch 8 para 142).

Where the specified date for compliance is before 1 April 2008 then any person who, without reasonable excuse, is persistently in default in relation to any requirement imposed by s 45(3) or s 45(3A) (taken with s 45(4) or s 45(5) (see the text and notes 17-28), as the case may require) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: see s 49 (as originally amended by the Deregulation and Contracting Out Act 1994 s 29); and Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309 art 11(2).

As to the standard scale see PARA 308 note 11. However, proceedings may only be instituted by or with the consent of the Director of Public Prosecutions: Charities Act 1993 s 94(1), (2)(d). As to offences by bodies

corporate see s 95; and PARA 582. As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

Any copy of an annual report transmitted to the Commission under the Charities Act 1993 s 45, together with the documents attached to it, must be kept by the Commission for such period as it thinks fit: s 45(6) (amended by the Deregulation and Contracting Out Act 1994 s 29 and the Charities Act 2006 Sch 8 para 138(7)). As to the meaning of 'document' see PARA 260 note 2.

16 Charities Act 1993 s 45(3A)(a) (s 45(3A) added by the Deregulation and Contracting Out Act 1994 s 29; and amended by the Charities Act 2006 Sch 8 para 138(4)).

17 Charities Act 1993 s 45(3A)(b) (as added and amended: see note 16).

18 Charities Act 1993 s 45(3A) (as added and amended: see note 16). A persistent default of s 45(3A) is an offence: see note 15.

19 *le* under the Charities Act 1993 s 42(1): see PARA 336.

20 *le* under the Charities Act 1993 s 42(3): see PARA 336.

21 Charities Act 1993 s 45(4) (amended by the Deregulation and Contracting Out Act 1994 s 29; the Charities Act 2006 Sch 8 para 138(5)).

22 *le* under the Charities Act 1993 s 43 or s 43A in the case of an English National Health Service charity, or s 43B in the case of Welsh National Health Service charity: see PARAS 351, 352.

23 Charities Act 1993 s 45(4)(a) (amended by SI 2005/1074).

24 See note 22.

25 Charities Act 1993 s 45(4)(b) (amended by SI 2005/1074).

26 As to the meaning of 'company' see PARA 227.

27 *le* the Companies Act 2006 Pt 15 (or its predecessor provisions in the Companies Act 1985: see the Companies Act 2006 s 1297 and SI 2008/948): see **COMPANIES**.

28 Charities Act 1993 s 45(5) (amended by the Deregulation and Contracting Out Act 1994 s 29; the Charities Act 2006 Sch 8 para 138(6); SI 2008/527; and SI 2008/948).

29 *le* the Companies Act 2006 Pt 16 (or its predecessor provisions: see note 27): see **COMPANIES**.

30 *le* under the Charities Act 1993 s 43: see PARA 350.

31 Charities Act 1993 s 45(5) (as amended: see note 28).

32 See PARA 366 et seq.

33 *le* under the Charities Act 2006 s 4(6); see PARA 6.

34 See the *CC15a Charity Reporting and Accounting: the Essentials* (Charity Commission, April 2009).

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366. Annual reports: group accounts.

Where group accounts are prepared¹ for a financial year of a parent charity², then the following additional³ provisions apply⁴. The annual report prepared⁵ by the charity trustees⁶ of the parent charity in respect of that year must include such a report by the trustees on the activities of the

charity's subsidiary undertakings⁷ during that year and such other information relating to any of those undertakings as may be prescribed by regulations made by the Minister⁸.

Any copy of any annual report transmitted to the Commission under these provisions must have attached to it both copy of the report made by the auditor on those accounts or, where those accounts have been examined⁹, a copy of the report made by the person carrying out the examination¹⁰.

1 le under the Charities Act 1993 s 49A, Sch 5A para 3(2): see PARA 337.

2 As to the meaning of 'financial year' see PARA 217 note 3. As to the meaning of 'parent charity' see PARA 337 note 2.

3 le in addition to the Charities Act 1993 s 45 (see PARA 365).

4 See the Charities Act 1993 s 49A, Sch 5A para 10(1), (6) (added by the Charities Act 2006 s 30, Sch 6). The Charities Act 1993 45(3)-(3B) apply in relation to the annual report referred to in Sch 5A para 10(2) as if any reference to the charity's gross income in the financial year in question were a reference to the aggregate gross income of the group in that year: s 49A, Sch 5A para 10(4) (as so added).

5 le under the Charities Act 1993 s 45: see PARA 365.

6 As to the meaning of 'charity trustees' see PARA 1 note 10.

7 As to the meaning of subsidiary undertaking see PARA 337 text and note 3.

8 Charities Act 1993 s 49A, Sch 5A para 10(2) (as added: see note 4). Without prejudice to the generality of Sch 5A para 10(2), such regulations may make provision: (1) for any such report as is mentioned in Sch 5A para 10(2)(a) to be prepared in accordance with such principles as are specified or referred to in the regulations; (2) enabling the Charity Commission to dispense with any requirement prescribed by virtue of Sch 5A para 10(2)(b) in the case of a particular subsidiary undertaking or a particular class of subsidiary undertaking: s 49A, Sch 5A para 10(3) (as so added). As to such regulations see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 10.

9 le under the Charities Act 1993 s 43, 43A or 43B as applies by s 49A, Sch 5A para 7: see PARA 354.

10 Charities Act 1993 s 49A, Sch 5A para 10(5) (as added: see note 4).

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367. Contents of annual reports: non-parent charities.

The following statutory requirements¹ apply to annual reports prepared² by the charity trustees³ of a non-parent charity⁴ in respect of a financial year⁵: (1) which begins on or after 1 April 2008⁶; or (2) which begins before that date and in respect of which the charity trustees determine that these requirements are to apply⁷.

The report on the activities of a charity during the year which is required to be contained in the annual report must specify the financial year to which it relates and must⁸:

- 210 (1) in the case of a charity which is not an auditable charity⁹, be a brief summary setting out the main activities undertaken by the charity to further its charitable purposes for the public benefit and the main achievements of the charity during the year¹⁰;

- 211 (2) in the case of a charity which is an auditable charity, be a review of the significant activities undertaken by the charity during the relevant financial year to further its charitable purposes for the public benefit or to generate resources to be used to further its purposes, including: (a) details of the aims and objectives which the charity trustees have set for the charity in that year, details of the strategies adopted and of significant activities undertaken, in order to achieve those aims and objectives; (b) details of the achievements of the charity during the year, measured by reference to the aims and objectives which have been set; (c) details of any significant contribution of volunteers to these activities; (d) details of the principal sources of income of the charity; and (e) a statement as to whether the charity trustees have given consideration to the major risks to which the charity is exposed and satisfied themselves that systems or procedures are established in order to manage those risks¹¹;
- 212 (3) in either case, where any fund of the charity was in deficit at the beginning of the relevant financial and the charity is one in respect of which a statement of accounts has been prepared¹² for that financial year, contain particulars of the steps taken by the charity trustees to eliminate that deficit¹³;
- 213 (4) in either case, contain a statement by the charity trustees as to whether they have complied with the statutory duty¹⁴ to have due regard to guidance published by the Commission relating to the operation of the public benefit requirement¹⁵; and
- 214 (5) in either case, be dated and be signed by one or more of the charity trustees, each of whom has been authorised to do so¹⁶.

1 The statutory requirements as to annual reports for non-parent charities are contained in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40. See also PARA 371.

2 Ie in accordance with the Charities Act 1993 s 45(1): see PARA 365.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 'Non-parent' charity means a charity which is not an investment fund and is either not a parent charity or is a parent charity but the charity trustees are not required to prepare group accounts in respect of the financial year to which the annual report relates: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 37(2)(a). As to the meaning of 'investment fund' see PARA 342 note 2. As to the meaning of 'parent charity' see the Charities Act 1993 Sch 5A para 1; and PARA 337 and note 2 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

5 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4. As to the information to be contained in a report relating to a non-parent charity see PARA 371.

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(4)(a).

7 Ie the charity trustees may make an accounts determination and a report determination: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(4)(b), (6)(d). As to accounts determinations see PARA 336 note 6. A report determination for this purpose means a determination that reg 40, rather than reg 11, is to apply to the annual report prepared in respect of the financial year in question: reg 4(6)(c)(i).

The charity trustees of a charity may not make an accounts determination or a report determination in respect of financial year beginning before 1 April 2008 if the charity is a special case charity, or if, before that date, they have either approved the accounts of the charity prepared in respect of that financial year or authorised the signature of an annual report prepared in respect of that financial year in accordance with the Charities (Accounts and Reports) Regulations 2005, SI 2005/572: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 4(7). As to the meaning of 'special case charity' see PARA 341 note 3.

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(1), (2)(a).

9 'Auditable charity' means a charity the accounts of which for the financial year in question are required to be audited in pursuance of any statutory requirement: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(1), (2)(b)(i).

- 11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(1), (2)(b)(ii).
- 12 le under the Charities Act 1993 s 42(1): see PARA 336.
- 13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(1), (2)(c)(i).
- 14 le under the Charities Act 2006 s 4: see PARA 6.
- 15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(1), (2)(c)(ii).
- 16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(1), (2)(c)(iii).

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368. Contents of annual reports: qualifying parent charities.

The following statutory requirements¹ apply to annual reports prepared² by the charity trustees³ of a qualifying parent charity⁴. The report on the activities of such a parent charity and its subsidiary undertakings⁵, during the year which is required to be contained in the annual report in respect of each financial year must specify the financial year to which it relates and must⁶:

- 215 (1) be a review of the significant activities undertaken by the charity during the relevant financial year to further its charitable purposes for the public benefit or to generate resources to be used to further its purposes including details of: (a) the aims and objectives which the charity trustees have set for the parent charity and its subsidiary undertakings in that year; (b) the strategies adopted and the significant activities undertaken, in order to achieve those aims and objectives; (c) the achievements of the parent charity and its subsidiary undertakings during the year, measured by reference to the aims and objectives which have been set; (d) any significant contribution of volunteers to these activities; and (e) the principal sources of income of the parent charity and of its subsidiary undertakings⁷;
- 216 (2) contain a statement as to whether the charity trustees have given consideration to the major risks to which the parent charity and its subsidiary undertakings are exposed, and satisfied themselves that systems or procedures are established in order to manage those risks⁸;
- 217 (3) where any fund of the parent charity was in deficit at the beginning of the financial year in question, contain particulars of the steps taken by the charity trustees to eliminate that deficit⁹;
- 218 (4) where the total of capital and reserves in any of the parent charity's subsidiary undertakings was materially in deficit at the beginning of the financial year, contain particulars of the steps taken by the relevant undertaking or undertakings to eliminate that deficit¹⁰;
- 219 (5) contain a statement by the charity trustees as to whether they have complied with the statutory duty¹¹ to have due regard to guidance published by the Charity Commission relating to the operation of the public benefit requirement¹²; and
- 220 (6) be dated and be signed by one or more of the charity trustees, each of whom has been authorised to do so¹³.

- 1 The statutory requirements as to annual reports for qualifying parent charities are contained in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41. See also PARA 372.
- 2 le in accordance with the Charities Act 1993 s 45(1): see PARA 365.
- 3 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(1). 'Qualifying parent charity' means a charity which is not an investment fund and the charity trustees of which are required to prepare group accounts in respect of the financial year to which the annual report relates: reg 37(d). As to the meaning of 'investment fund' see PARA 342 note 2. As to group accounts see PARA 337.
- 5 As to the meaning of 'subsidiary undertaking' see the Charities Act 1993 Sch 5A para 1; and PARA 337 and note 3 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)). However, for these purposes, 'subsidiary undertaking' does not include a subsidiary undertaking which is excluded from the group accounts in accordance with reg 19: reg 41(7).
- 6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(a).
- 7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(b).
- 8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(c).
- 9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(d).
- 10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(e).
- 11 le the duty in the Charities Act 2006 s 4 (see PARA 6).
- 12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(f).
- 13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(g).

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369. Contents of annual reports: non-parent investment funds.

The following statutory requirements¹ apply to annual reports prepared² by the charity trustees³ of a non-parent investment fund⁴. The report on the activities of the investment fund during the year which is required to be contained in the annual report must specify the financial year to which it relates and must⁵:

- 221 (1) be a review of the significant activities of the investment fund during that year, including details of the aims and objectives which have been set for the investment fund during the year, the policies adopted for achieving those aims and objectives and the achievements of the investment fund, measured by reference to the aims and objectives which have been set⁶;
- 222 (2) provide any other significant information which the charity trustees consider would assist charities participating in the investment fund to make an informed judgement on the suitability to the charity of the investment fund as an investment for the charity⁷;
- 223 (3) specify any material events affecting the investment fund which have occurred since the end of the year⁸;
- 224 (4) contain a statement as to the steps (if any) taken to consider whether any person to whom functions in respect of the management of the investment fund have been delegated has complied with the terms of the delegation⁹; and

225 (5) be signed, if the scheme or schemes regulating the investment fund allocates responsibility for preparing the report to a particular person, by that person, else by at least one of the charity trustees of the investment fund, each of whom has been authorised to do so¹⁰.

1 The statutory requirements as to annual reports for non-parent investment funds are contained in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38 and are set out in the following text and PARA 373.

2 be in accordance with the Charities Act 1993 s 45(1): see PARA 365.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(1). 'Non-parent investment fund' means an investment fund which is not a parent charity, or is a parent charity but the charity trustees are not required to prepare group accounts in respect of the financial year to which the annual report relates: reg 37(2)(b). As to the meaning of 'investment fund' see PARA 342 note 2. As to group accounts see PARA 337.

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(a).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(b).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(c).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(d).

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(e).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(f).

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370. Contents of annual reports: parent investment funds.

The following statutory requirements¹ apply to annual reports prepared² by the charity trustees³ of a parent investment fund⁴. The report on the activities of such an investment fund and of its subsidiary undertakings⁵ during the year which is required to be contained in the annual report must specify the financial year to which it relates and must⁶:

226 (1) be a review of the significant activities of the investment fund and of its subsidiary undertakings during that year, including details of: (a) the aims and objectives which have been set for the investment fund and its subsidiary undertakings during the year and identifying, in the case of subsidiary undertakings, how these aims and objectives support the investment activities of the investment fund; (b) the policies adopted for achieving those aims and objectives; and (c) the achievements of the investment fund and of its subsidiary undertakings, measured by reference to the aims and objectives which have been set⁷;

227 (2) where the total of capital and reserves in any of the investment fund's subsidiary undertakings was materially in deficit at the beginning of the financial year, contain particulars of the steps taken by the relevant undertaking or undertakings to eliminate that deficit⁸;

- 228 (3) provide any other significant information which the charity trustees consider would assist charities participating in the investment fund to make an informed judgement on the suitability to the charity of the investment fund as an investment for the charity⁹;
- 229 (4) specify any material events affecting the investment fund which have occurred since the end of the relevant financial year¹⁰;
- 230 (5) contain a statement as to the steps (if any) taken to consider whether any person to whom functions in respect of the management of the investment fund has been delegated has complied with the terms of the delegation¹¹; and
- 231 (6) be signed, if the scheme or schemes regulating the investment fund allocates responsibility for preparing the report to a particular person, by that person, or in any other case, by at least one of the charity trustees of the investment fund, each of whom has been authorised to do so¹².

1 The statutory requirements as to annual reports for parent investment funds are contained in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39 and are set out in the following text and PARA 374.

2 In accordance with the Charities Act 1993 s 45(1): see PARA 365.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(1). 'Parent investment fund' means an investment fund which is a parent charity and the charity trustees of which are required to prepare group accounts in respect of the financial year to which the annual report relates: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 37(2)(c). As to the meaning of 'investment fund' see PARA 342 note 2. As to group accounts see PARA 337.

5 As to the meaning of 'subsidiary undertaking' see PARA 337 text and note 5. However, for these purposes, 'subsidiary undertaking' does not include a subsidiary undertaking which is excluded from the group accounts in accordance with Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 19 (see PARA 337): reg 39(4).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(1), (2)(a).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(b).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(c).

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(d).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(e).

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(f).

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(g).

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371. Information required in annual reports: non-parent charities.

The following information relating to a non-parent charity¹ and to its trustees and officers is required to be contained in the annual report²:

- 232 (1) the name of the charity as it appears in the register of charities and any other name by which it makes itself known³;
- 233 (2) the number assigned to it in the register and, in the case of a charitable company, the number with which it is registered as a company⁴;
- 234 (3) the principal address of the charity and, in the case of a charitable company, the address of its registered office⁵;
- 235 (4) the name of any person who is a charity trustee of the charity on the date when the authority to sign and date the annual report⁶ is given, and, where any charity trustee on that date is a body corporate, the name of any person who is a director⁷ of the body corporate on that date⁸;
- 236 (5) the name of any other person who has, at any time during the relevant financial year⁹, been a charity trustee of the charity¹⁰;
- 237 (6) the name of any person who is a trustee for the charity on the date referred to in head (4) above¹¹;
- 238 (7) the name of any other person who has, at any time during the relevant financial year in question, been a trustee for the charity¹²;
- 239 (8) particulars, including the date if known, of any deed or other document¹³ containing provisions which regulate the purposes and administration of the charity¹⁴;
- 240 (9) the name of any person or body of persons entitled by the trusts of the charity to appoint one or more new charity trustees, and a description of the method provided by those trusts for such appointment¹⁵;
- 241 (10) a description of the policies and procedures (if any) which have been adopted by the charity trustees for the induction and training of charity trustees and where no such policies have been adopted a statement to that effect¹⁶;
- 242 (11) a description of the organisational structure of the charity¹⁷;
- 243 (12) a summary description of the purposes of the charity¹⁸;
- 244 (13) a description of the policies (if any) which have been adopted by the charity trustees for the selection of individuals and institutions who are to receive grants or other forms of financial support out of the assets of the charity¹⁹;
- 245 (14) a statement regarding the performance during the financial year of the investments belonging to the charity (if any)²⁰;
- 246 (15) where material investments are owned by a charity, a description of the policies (if any) which have been adopted by the charity trustees for the selection, retention and realisation of investments for the charity including the extent (if any) to which social, environmental or ethical considerations are taken into account²¹;
- 247 (16) a description of the policies (if any) which have been adopted by the charity trustees for the purpose of determining the level of reserves which it is appropriate for the charity to maintain in order to meet effectively the needs designated by its trusts, together with details of the amount and purpose of any material commitments and planned expenditure not provided for in the balance sheet which have been deducted from the assets in the unrestricted fund²² of the charity in calculating the amount of reserves, and where no such policies have been adopted, a statement to that effect²³;
- 248 (17) a description of the aims and objectives which the charity trustees have set for the charity in the future and of the activities contemplated in furtherance of those aims and objectives²⁴;
- 249 (18) a description of any assets held by the charity or by any charity trustee of, or trustee for, the charity, on behalf of another charity, and particulars of any special arrangements made with respect to the safe custody of such assets and their segregation from assets of the charity not so held and a description of the objects of the charity on whose behalf the assets are held²⁵.

1 As to the meaning of 'non-parent charity' see PARA 367 note 4.

2 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3). This provision is expressed to be subject to reg 40(4)-(7): see reg 40(3). As to annual reports see PARAS 365-370. These provisions apply to financial years beginning on or after 1 April 2008 or where the charity trustees have so determined: see PARA 367. As to the meaning of 'charity trustees' see PARA 1 note 10.

Where it is satisfied that, in the case of a particular charity or class of charities, or in the case of a particular financial year of a charity or class of charities, the disclosure of the name of any person whose name is required by any of reg 40(3)(d), (e), (f), (g) and (i) (see the text and notes 8-16) to be contained in the annual report of a charity could lead to that person being placed in any personal danger, the Charity Commission may dispense with the requirement in any of those provisions so far as it applies to the name of such person: reg 40(4)(a). The Commission may also, where it is satisfied that, in the case of a particular charity or class of charities, or in the case of a particular financial year of a charity or class of charities, the disclosure of the principal address of the charity in accordance with reg 40(3)(c) (see the text and note 5) could lead to any such person being placed in any personal danger, dispense with that requirement: reg 40(4)(b). As to the Charity Commission see PARAS 538-572.

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(a). As to the register of charities see PARA 304 et seq. In the case of a report prepared under the Charities Act 1993 s 46(5) (see PARA 375) (excepted charities which are not registered), this requirement is modified so that the information required to be contained in the annual report is the name of the charity: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(6)(a). Note that reg 40(6)(a) purports to amend reg 40(4)(a). However it is submitted this is in error and should instead refer to reg 40(3)(a).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(b). As to the meaning of 'company' see PARA 227. In the case of a report prepared under the Charities Act 1993 s 46(5) (see PARA 375) (excepted charities which are not registered), this requirement is modified so that the information required to be contained in the annual report is, in the case of a charitable company, the number with which it is registered as a company: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(6)(b). Note that reg 40(6)(b) purports to amend reg 40(4)(b). However it is submitted this is in error and should instead refer to reg 40(3)(b).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(c).

6 The authority referred to in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(1), (2)(c)(iii): see PARA 367 head (5).

7 'Director' in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate, and in any other case, includes any person occupying the position of a director by whatever name called: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(d). In the case of a charity having more than 50 charity trustees on the date referred to in the text, reg 40(3)(d) has effect so that the information required to be contained in the annual report is the names of not less than 50 of the charity trustees of the charity, including any charity trustee who is also an officer of the charity: reg 40(5)(a).

9 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(e). In the case of a charity having more than 50 charity trustees on the date referred to in head (4) in the text, reg 40(3)(e) is modified so that the information required to be contained in the annual report excludes the name of any charity trustee whose name has been excluded from the report in pursuance of reg 40(3)(d) (see note 8): reg 40(5)(b).

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(f).

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(g).

13 As to the meaning of 'document' see PARA 260 note 2.

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(h).

15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(i).

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(j). This information is not requirement of a charity which is not an auditable charity: see reg 40(7). As to the meaning of 'auditable charity' see PARA 367 note 9.

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(k). This information is not requirement of a charity which is not an auditable charity: reg 40(7).

- 18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(l).
- 19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(m). This information is not requirement of a charity which is not an auditable charity: reg 40(7).
- 20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(n). This information is not requirement of a charity which is not an auditable charity: reg 40(7).
- 21 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(o). This information is not requirement of a charity which is not an auditable charity: reg 40(7).
- 22 As to the meaning of 'unrestricted fund' see PARA 340 note 15.
- 23 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(p).
- 24 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(q). This information is not requirement of a charity which is not an auditable charity: reg 40(7).
- 25 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 40(3)(r).

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372. Information required in annual reports: qualifying parent charities.

The following information relating to a qualifying parent charity¹, to its trustees and officers, and to its subsidiary undertakings², is required to be contained in the annual report³:

- 250 (1) the name of the parent charity as it appears in the register of charities and any other name by which it makes itself known⁴;
- 251 (2) the number assigned to the parent charity in the register and, in the case of a charitable company, the number with which it is registered as a company⁵;
- 252 (3) the principal address of the parent charity and, in the case of a charitable company, the address of its registered office⁶;
- 253 (4) the name of any person who is a charity trustee⁷ of the parent charity on the date when the authority to sign and date the annual report⁸ is given, and, where any charity trustee on that date is a body corporate, the name of any person who is a director of the body corporate on that date⁹;
- 254 (5) the name of any other person who has, at any time during the financial year in question, been a charity trustee of the parent charity¹⁰;
- 255 (6) the name of any person who is a trustee for the parent charity on the date referred to in head (4)¹¹;
- 256 (7) the name of any other person who has, at any time during the financial year in question, been a trustee for the parent charity¹²;
- 257 (8) particulars, including the date if known, of any deed or other document containing provisions which regulate the purposes and administration of the parent charity¹³;
- 258 (9) the name of any person or body of persons entitled by the trusts of the parent charity to appoint one or more new charity trustees, and a description of the method provided by those trusts for such appointment¹⁴;
- 259 (10) a description of the policies and procedures (if any) which have been adopted by the charity trustees of the parent charity for the induction and training

- of charity trustees, and where no such policies have been adopted a statement to this effect¹⁵;
- 260 (11) a description of the organisational structure of the parent charity and of its subsidiary undertakings¹⁶;
- 261 (12) a summary description of the purposes of the parent charity¹⁷;
- 262 (13) a description of the policies (if any) which have been adopted by the charity trustees of the parent charity for the selection of individuals and institutions who are to receive grants, or other forms of financial support, out of the assets of the charity¹⁸;
- 263 (14) a statement regarding the performance during the financial year of: (a) any investments belonging to the parent charity; and (b) any investments belonging to the parent charity's subsidiary undertakings, where those investments are material to the group account¹⁹;
- 264 (15) where investments are owned by a qualifying parent charity or any of its subsidiary undertakings, and those investments are material to the group accounts, a description of the policies (if any) which have been adopted by the charity trustees, or as the case may be the subsidiary undertaking, for the selection, retention and realisation of investments, including the extent (if any) to which social, environmental or ethical considerations are taken into account²⁰;
- 265 (16) where the charity trustees have adopted policies for the purpose of determining the level of reserves which it is appropriate to maintain in order to meet effectively the needs designated by its trusts: (a) a description of those policies including in particular whether account has been taken of any reserves held by its subsidiary undertakings in determining the appropriate level of reserves; and (b) details of the amount and purpose of any material commitments and planned expenditure not provided for in the balance sheet which have been deducted from the assets in the unrestricted fund of the charity in calculating the amount of reserves²¹;
- 266 (17) if the charity trustees have not adopted policies falling within head (16) a statement that no such policies have been adopted²²;
- 267 (18) a description of the aims and objectives which the charity trustees have set for the parent charity in the future, and of the activities contemplated in furtherance of those aims and objectives²³; and
- 268 (19) a description of any assets held by the parent charity or by any charity trustee of, or trustee for, the charity, on behalf of another charity, and particulars of any special arrangements made with respect to the safe custody of such assets and their segregation from assets of the charity not so held and a description of the objects of the charity on whose behalf the assets are held²⁴.

1 As to the meaning of 'qualifying parent charity' see PARA 368 note 4.

2 As to the meaning of 'subsidiary undertaking' see the Charities Act 1993 Sch 5A para 1; and PARA 337 and note 3 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)). However, for these purposes, 'subsidiary undertaking' does not include a subsidiary undertaking which is excluded from the group accounts in accordance with reg 19 (see PARA 337): reg 41(7).

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(1). This provision is expressed to be subject to reg 41(4)-(6): see reg 40(3).

Where it is satisfied that, in the case of a particular charity or class of charities, or in the case of a particular financial year of a charity or class of charities, the disclosure of the name of any person whose name is required by any of reg 41(3)(d), (e), (f), (g) and (i) (see heads (4)-(7), (9) in the text) to be contained in the annual report of a charity could lead to that person being placed in any personal danger, the Charity Commission may dispense with the requirement in any of those provisions so far as it applies to the name of that person: reg 41(4)(a). The Commission may also, where it is satisfied that, in the case of a particular charity or class of charities, or in the case of a particular financial year of a charity or class of charities, the disclosure of the principal address of the charity in accordance with reg 41(3)(c) (see head (3) in the text) could lead to any such person being placed in any personal danger, dispense with that requirement: reg 41(4)(b).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(a). As to the register of charities see PARA 304 et seq. In the case of a report prepared under the Charities Act 1993 s 46(5) (see PARA 375) (excepted charities which are not registered), this requirement is modified so that the information required to be contained in the annual report is the name of the charity: see the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(6)(a).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(b). As to the meaning of 'company' see PARA 227. In the case of a report prepared under the Charities Act 1993 s 46(5) (see PARA 375) (excepted charities which are not registered), this requirement is modified so that the information required to be contained in the annual report is, in the case of a charitable company, the number with which it is registered as a company: Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(6)(b).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(c).

7 As to the meaning of 'charity trustees' see PARA 1 note 10.

8 The authority referred to in the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(2)(g): see PARA 368 head (6).

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(d). In the case of a charity having more than 50 charity trustees on the date referred to in the text, reg 41(3)(d) has effect so that the information required to be contained in the annual report is the names of not less than 50 of the charity trustees of the charity, including any charity trustee who is also an officer of the charity: see reg 41(5)(a).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(e). In the case of a charity having more than 50 charity trustees on the date referred to in head (4) in the text, reg 41(3)(e) is modified so that the information required to be contained in the annual report excludes the name of any charity trustee whose name has been excluded from the report in pursuance of reg 41(3)(d) (see note 9): see reg 41(5)(b).

11 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(f).

12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(g).

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(h).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(i).

15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(j).

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(k).

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(l).

18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(m).

19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(n).

20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(o).

21 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(p).

22 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(q).

23 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(r).

24 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 41(3)(s).

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373. Information required in annual reports: non-parent investment funds.

The following information relating to a non-parent investment fund¹ and to its trustees and officers is required to be contained in the annual report²:

- 269 (1) the name of the investment fund as it appears in the register of charities and any other name by which it makes itself known³;
- 270 (2) the number assigned to the investment fund in the register⁴;
- 271 (3) the principal address of the investment fund⁵;
- 272 (4) particulars, including the date, of any scheme or schemes containing provisions which regulate the purposes and administration of the investment fund⁶;
- 273 (5) the name of any person or body of persons entitled under any such scheme or schemes to appoint any charity trustee of the investment fund, and a description of the method provided by any such scheme or schemes for such appointment⁷;
- 274 (6) a description of the objects of the investment fund⁸;
- 275 (7) a description of the organisational structure of the investment fund⁹;
- 276 (8) the name of any charity trustee of the investment fund, on the date of the signature of the report if the scheme or schemes regulating the investment fund allocates responsibility for preparing the report to a particular person¹⁰, otherwise on the date when the authority to sign and date the annual report¹¹ is given, and, where any such person is a body corporate, the name of any person who is a director of the body corporate on that date¹²;
- 277 (9) the professional qualifications of any individual person referred to in head (5) or (8)¹³;
- 278 (10) the name of any other person who has, at any time during the financial year in question, been a charity trustee of the investment fund¹⁴;
- 279 (11) the name of any person who is, in relation to the investment fund, a trustee for the charity on the date referred to in head (8)¹⁵;
- 280 (12) the name of any other person who has, at any time during the financial year in question, been, in relation to the investment fund, a trustee for the charity¹⁶;
- 281 (13) a description of any functions relating to the management of the investment fund which have been delegated (including the maintenance of the register of charities participating in the investment fund), and of the procedures adopted to ensure that those functions are discharged consistently with the scheme or schemes by which the investment fund is regulated, and with the investment policies adopted for the investment fund¹⁷;
- 282 (14) the name and address of any person to whom any such functions in respect of the management of the investment fund have been delegated or who have been instructed to provide advice on investment matters¹⁸; and
- 283 (15) a statement as to which, if any, of the persons whose names are given in accordance with the provisions of head (8), (10), (11), (12) or (14), are authorised persons¹⁹.

1 As to the meaning of 'non-parent investment fund' see PARA 369 note 4.

2 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(1), (3).

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(a). As to the register of charities see PARA 304 et seq.

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(b).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(c). As to the meaning of 'charity trustees' see PARA 1 note 10.

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(d).

- 7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(e).
- 8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(f).
- 9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(g).
- 10 le under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(f)(i): see PARA 369 head (5).
- 11 le under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(2)(f)(ii): see PARA 369 head (5).
- 12 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(h).
- 13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(i).
- 14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(j).
- 15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(k).
- 16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(l).
- 17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(m).
- 18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(n).
- 19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 38(3)(o). As to the meaning of 'authorised person' see the Financial Services and Markets Act 2000 s 31; and **FINANCIAL SERVICES AND INSTITUTIONS** (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)).

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374. Information required in annual reports: parent investment funds.

The following information relating to a parent investment fund¹, to its trustees and officers, and to its subsidiary undertakings², is required to be contained in the annual report³:

- 284 (1) the name of the investment fund as it appears in the register of charities and any other name by which it makes itself known⁴;
- 285 (2) the number assigned to the investment fund in the register⁵;
- 286 (3) the principal address of the investment fund⁶;
- 287 (4) particulars, including the date, of any scheme or schemes containing provisions which regulate the purposes and administration of the investment fund⁷;
- 288 (5) the name of any person or body of persons entitled under any such scheme or schemes to appoint any charity trustee of the investment fund, and a description of the method provided by any such scheme or schemes for such appointment⁸;
- 289 (6) a description of the objects of the investment fund⁹;
- 290 (7) a description of the organisational structure of the investment fund, and of its subsidiary undertakings¹⁰;
- 291 (8) the name of any charity trustee of the investment fund, on the date of the signature of the report if the scheme or schemes regulating the investment fund allocates responsibility for preparing the report to a particular person¹¹ otherwise on the date when the authority to sign and date the annual report¹² is given, and,

- where any such person is a body corporate, the name of any person who is a director of the body corporate on that date¹³;
- 292 (9) the professional qualifications of any individual person referred to in head (5) or (8)¹⁴;
- 293 (10) the name of any other person who has, at any time during the financial year in question, been a charity trustee of the investment fund¹⁵;
- 294 (11) the name of any person who is, in relation to the investment fund, a trustee for the charity on the date referred to in head (8)¹⁶;
- 295 (12) the name of any other person who has, at any time during the financial year in question, been, in relation to the investment fund, a trustee for the charity¹⁷;
- 296 (13) a description of any functions relating to the management of the investment fund which have been delegated (including the maintenance of the register of charities participating in the investment fund), and of the procedures adopted to ensure that those functions are discharged consistently with the scheme or schemes by which the investment fund is regulated, and with the investment policies adopted for the investment fund¹⁸;
- 297 (14) the name and address of any person to whom any such functions in respect of the management of the investment fund have been delegated or who have been instructed to provide advice on investment matters¹⁹; and
- 298 (15) a statement as to which, if any, of the persons whose names are given in accordance with the provisions of head (8), (10), (11), (12) or (14), are authorised persons²⁰.

1 As to the meaning of 'non-parent investment fund' see PARA 369 note 4.

2 As to the meaning of 'subsidiary undertaking' see the Charities Act 1993 Sch 5A para 1; and PARA 337 and note 3 (definition applied by the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 2(1)). However, for these purposes, 'subsidiary undertaking' does not include a subsidiary undertaking which is excluded from the group accounts in accordance with reg 19 (see PARA 337): reg 39(4).

3 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(1), (3).

4 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(a).

5 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(b).

6 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(c).

7 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(d).

8 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(e).

9 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(f).

10 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(g).

11 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(g)(i): see PARA 370 head (6).

12 Ie under the Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(2)(g)(ii): see PARA 370 head (6).

13 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(h).

14 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(i).

15 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(j).

16 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(k).

17 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(l).

18 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(m).

19 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(a).

20 Charities (Accounts and Reports) Regulations 2008, SI 2008/629, reg 39(3)(o). As to the meaning of 'authorised person' see PARA 373 note 19.

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375. Special provision as respects accounts and annual reports of exempt and other excepted charities.

None of the provisions in the Charities Act 1993 relating to accounts, audits and annual reports¹ applies to an exempt charity². The charity trustees³, however, must keep proper books of account with respect to the affairs of the charity and, if not required by or under the authority of any other Act to prepare periodical statements of account, must prepare consecutive statements of account consisting on each occasion of an income and expenditure account relating to a period of not more than 15 months and a balance sheet relating to the end of that period⁴. The books of accounts and statements of account relating to an exempt charity must be preserved for a period of six years at least unless the charity ceases to exist and the Charity Commission⁵ consents in writing to their being destroyed or otherwise disposed of⁶.

However, as from a day to be appointed, the statutory provisions relating to the duty of auditors, independent examiners and examiners to report matters to the Charity Commission⁷ will also apply to a person appointed to audit, or report on, the accounts of an exempt charity⁸ which is not a company⁹, but any reference to the Commission or to any of its functions is to be read as a reference to the charity's principal regulator or to any of that person's functions in relation to the charity as such¹⁰.

The provisions of the Charities Act 1993 relating to annual reports and annual audits or examination of charity accounts¹¹ do not apply to any charity whose gross income does not exceed £5,000¹² and which is not registered¹³, unless that charity is an English National Health Service charity or a Welsh National Health Service charity¹⁴, in which case the authority under which the Minister may make supplementary provisions for annual audits by regulations applies¹⁵.

A charity whose gross income exceeds £5,000¹⁶ is nevertheless absolved from the obligation to prepare annual reports¹⁷ if it is excepted by the statutory provisions which state which charities are not required to be registered¹⁸ and is not registered¹⁹. However, in this case, if requested to do so by the Charity Commission, the charity trustees must prepare an annual report in respect of such financial year²⁰ as is specified in the Commission's request²¹. Any report so prepared must contain such a report by the charity trustees on the activities of the charity during the year in question, and such other information relating to the charity or to its trustees or officers, as may be prescribed by regulations²² made in relation to annual reports²³. Where a charity is required to prepare such an annual report in respect of a financial year and: (1) the charity is a parent charity²⁴ at the end of the year; and (2) group accounts are prepared for that year under the statutory provisions²⁵, then the copy of the annual report transmitted to the Commission must also have attached to it both a copy of the group accounts and either a copy of the report made by the auditor on those accounts or, where those accounts have been examined²⁶, a copy of the report made by the person carrying out the examination²⁷.

An appeal against a decision of the Commission to request charity trustees to prepare an annual report for a charity²⁸ lies to the Tribunal²⁹ at the instance of the Attorney General, the charity trustees of the charity and, if a body corporate, the charity³⁰. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission³¹.

1 In the Charities Act 1993 ss 41-45: see PARA 335 et seq. As from day to be appointed s 46 is amended by the Charities Act 2006 s 29(2)(a) so as to refer to ss 41-44 or s 45. At the date at which this volume states the law no such day had been appointed.

2 Charities Act 1993 ss 46, 49A, Sch 5A para 12 (s 49A, Sch 5A added by the Charities Act 2006 s 30, Sch 6). As to exempt charities see PARA 315-317. As to the meaning of 'charity' see PARA 1.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities Act 1993 s 46(1).

5 As to the Charity Commission see PARAS 538-572.

6 Charities Act 1993 s 46(2) (amended by the Charities Act 2006 Sch 8 para 139(2)).

7 In the Charities Act 1993 s 44A: see PARA 361.

8 Including where that charity has a gross income which does not exceed £5,000 and is not registered.

9 See the Charities Act 1993 ss 46(1), 46(2A) (s 46(1) prospectively amended and s 46(2A) prospectively added by the Charities Act 2006 s 29(2)). Any reference to a person acting in the capacity mentioned in the Charities Act 1993 s 44A(1) is to be read as a reference to his acting as a person appointed as mentioned in s 46(2A): s 46(2B)(a) (prospectively added by the Charities Act 2006 s 29(2)).

10 See the Charities Act 1993 s 46(2B)(b) (prospectively added by the Charities Act 2006 s 29(2)). The Charities Act 1993 s 44A applies in accordance with s 46(2A), (2B) to a charity mentioned in s 44(3) which is also an exempt charity: s 46(3A) (prospectively added by the Charities Act 2006 Sch 8 para 139(3)).

11 In the Charities Act 1993 s 43 (see PARA 350), s 44 (see PARA 355), s 44A (see PARA 361), s 45 (see PARA 365).

12 In any charity excepted from the requirement of registration by the Charities Act 1993 s 3(A)(2)(d) (whether or not it is also excepted from registration by s 3A(2)(b) or (c)).

13 Charities Act 1993 s 46(3) (substituted by the Charities Act 2006 Sch 8 para 139(3)). See PARA 306.

14 As to the meaning of 'English National Health Service charity' see PARA 351 note 2. As to the meaning of 'Welsh National Health Service charity' see PARA 352 note 2.

15 In the Charities Act 1993 s 44 (see PARA 355), s 44A (see PARA 361): Charities Act 1993 s 46(3B) (added by the Charities Act 2006 Sch 8 para 139(3)). As to the Minister see PARA 580.

16 In it does not fall within the Charities Act 1993 s 3(A)(2)(d): see PARA 305.

17 In those contained in the Charities Act 1993 s 45: see PARA 365.

18 In under the Charities Act 1993 s 3A(2)(b) or (c): see PARA 305.

19 See the Charities Act 1993 s 46(4) (amended by the Charities Act 2006 Sch 8 para 139(4)).

20 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

21 Charities Act 1993 s 46(5) (amended by the Charities Act 2006 Sch 8 para 139(5)). In respect of a financial year of a charity beginning on or after 1 April 2008, in relation to any report required to be prepared under s 46(5), the provisions of s 45(3)-(6) apply as if it were an annual report required to be prepared under s 45(1) (PARA 365), save that s 45(3) applies without reference to the requirement that the charity's gross income in the relevant financial year must exceed £25,000 for that provision to apply: see s 46(7) (substituted by the Charities Act 2006 Sch 8 para 139(6)); Charities Act 2006 (Commencement No 4, Transitional Provisions and Savings) Order 2008, SI 2008/945, art 8.

22 In by regulations under the Charities Act 1993 s 45 (see PARA 365): see PARA 371.

- 23 Charities Act 1993 s 46(6).
- 24 As to the meaning of 'parent charity' see PARA 337 note 2.
- 25 Ie under the Charities Act 1993 s 49A, Sch 5A para 3 (see PARA 337).
- 26 Ie under the Charities Act 1993 s 43, 43A or 43B as applied by s 49A, Sch 5A para 7: see PARA 354.
- 27 Charities Act 1993 s 49A, Sch 5A para 11 (added by the Charities Act 2006 s 30, Sch 6).
- 28 Ie under the Charities Act 1993 s 46(5).
- 29 As to the Tribunal see PARA 573 et seq.
- 30 See the Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 31 See the Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (as added: see note 30).

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376. Public inspection of annual reports and other documents.

Any document kept by the Charity Commission¹ is open to public inspection at all reasonable times during the period for which it is so kept, or if the Commission so determines, during such lesser period as it may specify². On request the Commission must furnish any person with copies of, or extracts from, any document in its possession which is for the time being open to public inspection³.

Where any person requests the charity trustees⁴ of a charity⁵ in writing to provide him with a copy of the charity's most recent accounts⁶, or its most recent annual report if such a report has been prepared⁷, and pays them such reasonable fee, if any, as they may require in respect of the costs of complying with the request, those trustees must comply with the request within the period of two months beginning with the date on which it is made⁸.

1 Ie in pursuance of the Charities Act 1993 s 45(6): see PARA 365. As to the Charity Commission see PARAS 538-572.

2 Charities Act 1993 s 47(1) (amended by the Charities Act 2006 Sch 8 para 140(2)).

3 Charities Act 1993 s 84 (amended by the Charities Act 2006 Sch 8 para 163). The documents open to public inspection are the ones open to inspection under the Charities Act 1993 Pts II-IV or s 75D.

4 As to the meaning of 'charity trustees' see PARA 1 note 10.

5 As to the meaning of 'charity' see PARA 1.

6 The reference to a charity's most recent accounts means:

49 (1) in the case of a charity other than one falling within head (2) or (3) below, a reference to the statement of accounts or account and statement prepared in pursuance of the Charities Act 1993 s 42(1) or (3) (see PARA 336) in respect of the last financial year of the charity in respect of which a statement of accounts or account and statement has or have been so prepared (s 47(3) (b) (amended by the Deregulation and Contracting Out Act 1994 s 39, Sch 11 para 12));

- 50 (2) in the case of a charity which is a company, a reference to the most recent annual accounts of the company prepared under the Companies Act 2006 Pt 16 (see **COMPANIES**) in relation to which any of the following conditions is satisfied: (a) they have been audited; (b) in relation to financial years of charities beginning on or after 1 April 2008, they have been examined by an independent examiner under the Charities Act 1993 s 43(3)(a) (see PARA 350); or (c) they relate to a year in respect of which the company is exempt from audit under the Companies Act 2006 Pt 16 and neither the Charities Act 1993 s 43(2) nor s 43(3) apply to them (Charities Act 1993 s 47(3)(c) (substituted by SI 1994/1935; and amended by SI 2008/948 and SI 2008/527)); and
- 51 (3) in the case of an exempt charity, a reference to the accounts of the charity most recently audited in pursuance of any statutory or other requirement or, if its accounts are not required to be audited, the accounts most recently prepared in respect of the charity (Charities Act 1993 s 47(3)(d)).

As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4. As to the meaning of 'company' see PARA 227.

In relation to a charity whose charity trustees have prepared any group accounts (ie under the Charities Act 1993 s 49A, Sch 5A para 3(2): see PARA 337) the reference to its most recent accounts includes the group accounts most recently prepared by them: Charities Act 1993 s 49A, Sch 5A para 13 (added by the Charities Act 2006 s 30, Sch 6).

7 In pursuance of the Charities Act 1993 s 45(1) or 46(5): s 47(4) (added by the Charities Act 2006 Sch 8 para 140(4)). The reference to a charity's most recent annual report is a reference to the annual report so prepared in respect of the last financial year of the charity in respect of which an annual report has been so prepared: Charities Act 1993 s 47(5) (added by the Charities Act 2006 Sch 8 para 140(4)).

8 Charities Act 1993 s 47(2) (amended by the Charities Act 2006 Sch 8 para 140(3)). If any requirement imposed by the Charities Act 1993 s 47(2) (as extended by Sch 5A para 13 (see note 6)) is not complied with, and the specified date of compliance is on or after 1 April 2008 (see the Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309, art 11(1)), each person who immediately before the date for compliance specified in the section in question was a charity trustee of the charity is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, a daily default fine not exceeding 10% of level 4 on the standard scale for so long as the person in question remains a charity trustee of the charity: Charities Act 1993 s 49(1), (2) (substituted by the Charities Act 2006 s 75(1), Sch 8 para 142); Charities Act 1993 Sch 5A para 14(4) (added by the Charities Act 2006 s 30, Sch 6). However, it is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirement in question would be complied with in time: Charities Act 1993 s 49(3) (substituted by the Charities Act 2006 Sch 8 para 142).

Where the specified date for compliance is before 1 April 2008 then any person who, without reasonable excuse, is persistently in default in relation to any requirement imposed by the Charities Act 1993 s 47(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 49 (as originally amended by the Deregulation and Contracting Out Act 1994 s 29); Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309, art 11(2).

As to the standard scale see PARA 308 note 11. However, proceedings may only be instituted by or with the consent of the Director of Public Prosecutions: Charities Act 1993 s 94(1), (2)(d). As to offences by bodies corporate see s 95; and PARA 582. As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(1) DUTIES OF CHARITY TRUSTEES/(ii) Accounts/H. ANNUAL REPORTS, ANNUAL STATEMENTS AND ANNUAL RETURNS/377. Annual returns by registered charities.

377. Annual returns by registered charities.

Every registered charity¹ must prepare in respect of each of its financial years² an annual return in such form, and containing such information, as may be prescribed by regulations³ made by the Charity Commission⁴. However, this does not apply in relation to any financial year of a charity in which the gross income⁵ does not exceed £10,000⁶.

Any such return under these provisions must be transmitted to the Commission by the date by which the charity trustees⁷ are required⁸ to transmit to it the annual report required to be prepared in respect of the financial year in question⁹.

The Commission may dispense with these requirements¹⁰ in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities¹¹. An appeal against a decision of the Commission not to so dispense with these requirements lies to the Tribunal¹² at the instance of the Attorney General and the charity trustees of any charity affected by the decision¹³. The Tribunal has power to quash the decision and, if appropriate, remit the matter to the Commission¹⁴.

1 le registered under the Charities Act 1993 s 3A (see PARAS 304-307): s 97(1). As to the meaning of 'charity' see PARA 1.

2 As to the meaning of 'financial year' see PARAS 217 note 3, 338 note 4.

3 Such regulations are made and published annually by the Charity Commission.

4 Charities Act 1993 s 48(1) (amended by the Charities Act 2006 Sch 8 para 141(2)). As to the Charity Commission see PARAS 538-572. This is subject to the Charities Act 1993 s 48(1A): see s 48(1) (amended by the Deregulation and Contracting Out Act 1994 s 30(2)).

5 As to the meaning of 'gross income' see PARA 217 note 2.

6 Charities Act 1993 s 48(1A) (added by the Deregulation and Contracting Out Act 1994 s 30(3); and amended by the Charities Act 2006 Sch 8 para 141(3)). The Minister may by order amend the Charities Act 1993 s 48(1A) by substituting a different sum for the sum for the time being specified there: s 48(4) (added by the Deregulation and Contracting Out Act 1994 s 30(4); and amended by SI 2006/2951). At the date at which this volume states the law no such order had been made. As to the making of orders generally see the Charities Act 1993 s 86; and PARA 584. As to the Minister see PARA 580.

As from a day to be appointed, this provision does not apply if the charity is constituted as a CIO: see s 48(1A) (prospectively amended by the Charities Act 2006 Sch 7 para 5). At the date at which this volume states the law no such day had been appointed. As to CIOs see PARAS 240-253.

7 As to the meaning of 'charity trustees' see PARA 1 note 10.

8 le by virtue of the Charities Act 1993 s 45(3): see PARA 365.

9 Charities Act 1993 s 48(2) (amended by the Charities Act 2006 Sch 8 para 141(4)). If any requirement imposed by the Charities Act 1993 s 48(2) is not complied with, and the specified date of compliance is on or after 1 April 2008 (see the Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309, art 11(1)), each person who immediately before the date for compliance specified in the section in question was a charity trustee of the charity is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, a daily default fine not exceeding 10% of level 4 on the standard scale for so long as the person in question remains a charity trustee of the charity: s 49(1), (2) (substituted by the Charities Act 2006 Sch 8 para 142). However, it is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirement in question would be complied with in time: Charities Act 1993 49(3) (substituted by the Charities Act 2006 Sch 8 para 142).

Where the specified date for compliance is before 1 April 2008 then any person who, without reasonable excuse, is persistently in default in relation to any requirement imposed by the Charities Act 1993 s 48(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 49 (as originally amended by the Deregulation and Contracting Out Act 1994 s 29); Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309 art 11(2).

As to the standard scale see PARA 308 note 11. However, proceedings may only be instituted by or with the consent of the Director of Public Prosecutions: Charities Act 1993 s 94(1), (2)(d). As to offences by bodies corporate see s 95; and PARA 582. As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

10 le the requirements of the Charities Act 1993 s 48(1): see the text and notes 1-6.

11 Charities Act 1993 s 48(3) (amended by the Charities Act 2006 Sch 8 para 141(5)).

12 As to the Tribunal see PARA 573 et seq.

13 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

14 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 13).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(i) Exercise of Powers generally/378. Exercise of discretionary powers.

(2) POWERS OF CHARITY TRUSTEES

(i) Exercise of Powers generally

378. Exercise of discretionary powers.

Trustees invested with discretionary powers must exercise them honestly and with a fair consideration of the subject¹. They need not give reasons for their actions². Where they state reasons which do not justify their conclusions³, or where they have acted corruptly or improperly⁴, the court will interfere; but the court is generally reluctant to interfere with the discretion of trustees by means of schemes⁵, although in order to retain some control over the trustees it may refuse to dismiss an action seeking the interference of the court⁶, or may refuse to order payment out to trustees of a fund in court without an affidavit by them stating how they propose to apply the money⁷.

1 *Re Beloved Wilkes' Charity* (1851) 20 LJCh 588 at 597 per Lord Truro LC. The exercise by trustees of discretionary powers was discussed in *McPhail v Doulton* [1971] AC 424 at 449, [1970] 2 All ER 228 at 240, HL, per Lord Wilberforce.

2 *Re Beloved Wilkes' Charity* (1851) 20 LJCh 588.

3 *Re Beloved Wilkes' Charity* (1851) 20 LJCh 588. See, however, *A-G v Mosely* (1848) 17 LJCh 446, where it was said that a discretionary consent might be withheld for an insufficient reason or none.

4 *A-G v Glegg* (1738) Amb 584; *A-G v Governors of Harrow School* (1754) 2 Ves Sen 551; *Waldo v Caley* (1809) 16 Ves 206 at 212 per Lord Eldon LC; *Ex p Berkhamstead Free School* (1813) 2 Ves & B 134 at 138 per Lord Eldon LC; *Re Bedford Charity* (1833) 5 Sim 578; *A-G v Boucherett* (1858) 25 Beav 116. See also *A-G v Governors etc of Sherborne Grammar School* (1854) 18 Beav 256 (discretion of visitor).

5 *Powerscourt v Powerscourt* (1824) 1 Mol 616 (trust of a temporary nature); *A-G v Gaskell* (1831) 9 LJOS Ch 188; *Re Lea, Lea v Cooke* (1887) 34 ChD 528 (where no permanent charity was intended). In *Re Hurley, Nichols v Pargiter* (1900) 17 TLR 115 a scheme was ordered by the court, although the trustees were given a discretionary power.

6 *A-G v Governors of Harrow School* (1754) 2 Ves Sen 551.

7 *Re Devlin's Estate, Hagan v Duff* (1889) 23 LR Ir 516.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(i) Exercise of Powers generally/379. Who may exercise discretionary powers.

379. Who may exercise discretionary powers.

Where a power to prescribe the mode of applying a charitable gift is contained in the trust instrument, it is a question of construction to determine who is capable of exercising the power¹. Powers given to trustees, and even to a testator's 'said trustees' (being named earlier in the will) are prima facie regarded as annexed to the office and therefore exercisable by the trustees for the time being².

A power given to executors only is exercisable by continuing³ or surviving⁴ executors, but not by one who renounces⁵, or by persons subsequently appointed trustees⁶. The question whether it is exercisable by a substituted personal representative appointed by the court under the Administration of Justice Act 1985 has not yet come before the court⁷.

A power given to a person who is not a trustee of the property cannot be exercised by any other person⁸; if the named person does not or cannot exercise the power, the court must exercise the discretion⁹.

The permissible manner of exercise of a power and its scope also depend upon the construction of the trust instrument¹⁰.

1 *Crawford v Forshaw* [1891] 2 Ch 261 at 267-268, CA, per Bowen LJ; and see the non-charity cases of *Re Smith, Eastick v Smith* [1904] 1 Ch 139; *Re Hayes' Will Trusts, Pattinson v Hayes* [1971] 2 All ER 341, [1971] 1 WLR 758.

2 *Re Smith, Eastick v Smith* [1904] 1 Ch 139. See also *Re Taylor's Charity, ex p Blackburne* (1820) 1 Jac & W 297 (where the selection of objects was left with the persons nominated by the testator as trustees, although new trustees were appointed); *Re Hampton, Public Trustee v Hampton* (1918) 88 LJCh 103. See also the Trustee Act 1925 ss 18, 36(7), 43; the Law of Property Act 1925 s 156; and **TRUSTS**.

3 *Crawford v Forshaw* [1891] 2 Ch 261, CA.

4 *A-G v Glegg* (1738) Amb 584.

5 *A-G v Fletcher* (1835) 5 LJCh 75; cf the Administration of Estates Act 1925 s 8; and see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 25.

6 *Hibbard v Lamb* (1756) Amb 309.

7 See the Administration of Justice Act 1985 s 50; and **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 706.

8 *Re M'Auliffe's Goods* [1895] P 290; cf *Re Lalor's Goods* (1901) 85 LT 643.

9 *Moggridge v Thackwell* (1792) 1 Ves 464 at 475 per Lord Thurlow LC; on rehearing (1803) 7 Ves 36 at 86 per Lord Eldon LC; affd (1807) 13 Ves 416, HL; cf *Doyley v A-G* (1735) 4 Vin Abr 485 pl 16 (a trustee who refused to act). See also PARA 123.

10 See PARA 123; and **TRUSTS** vol 48 (2007 Reissue) PARA 971 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(i) Exercise of Powers generally/380. Powers of majority of trustees or quorum.

380. Powers of majority of trustees or quorum.

Apart from powers exercisable under statutory provisions by a majority of trustees, the general rule is that a majority of the trustees of a trust of a public or charitable nature acting within the limits of the instrument of foundation¹ bind the minority².

Schemes for the administration of a charity may contain a provision that a certain number of trustees constitute a quorum³.

1 *Ward v Hipwell* (1862) 3 Giff 547.

2 *Re Whiteley, Bishop of London v Whiteley* [1910] 1 Ch 600; *Doe d Read v Godwin* (1822) 1 Dow & Ry KB 259 (conveyance by majority); but see *Re Ebsworth and Tidy's Contract* (1889) 42 ChD 23, CA (where it was held that without statutory authority a majority of trustees could not pass the legal estate if vested in all); *Re Congregational Church, Smethwick* [1866] WN 196; *A-G v Shearman* (1839) 2 Beav 104 (lease); *Doe d Dupleix v Roe* (1794) 1 Anst 86 (action of ejectment); *Withnell v Gartham* (1795) 6 Term Rep 388; *Wilkinson v Malin* (1832) 2 Cr & J 636; *A-G v Scott* (1750) 1 Ves Sen 413 at 416 per Lord Hardwicke LC; *A-G v Cuming* (1843) 2 Y & C Ch Cas 139 (election of minister of Established Church by advowson trustees); *Davis v Jenkins* (1814) 3 Ves & B 151 at 159 per Lord Eldon LC; *Perry v Shipway* (1859) 4 De G & J 353; *A-G v Lawson* (1866) 36 LJCh 130 (appointment and dismissal of minister of dissenting chapel).

3 Cf *Re Beverley Grammar School* (1839) 9 LJCh 91.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(ii) Authorisation of Dealings by the Charity Commission/381. General power.

(ii) Authorisation of Dealings by the Charity Commission

381. General power.

If it appears to the Charity Commission¹ that an action which is proposed or contemplated in the administration of a charity² is expedient in the interests of the charity, the Commission may by order³ sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees⁴ in the administration of the charity⁵. Anything done under the authority of such an order is deemed to be properly done in the exercise of those powers⁶.

Such an order may be made to authorise a particular transaction, compromise⁷ or the like, or a particular application of property, or so as to confer a more general authority⁸, and in particular may authorise⁹ a charity to use common premises or employ a common staff or otherwise combine for any administrative purpose with another charity¹⁰.

An application for the review of a decision of the Commission not to make such an order lies to the Tribunal¹¹ at the instance of the Attorney General, the charity trustees of the charity and, if a body corporate, the charity itself¹². The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission¹³.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'charity' see PARA 1.

3 It has been held that the order should be made formally under seal: see *BIU Estates Ltd v Chichester Diocesan Fund and Board of Finance Inc* (1963) 186 Estates Gazette 261 (decided under earlier legislation).

4 As to the meaning of 'charity trustees' see PARA 1 note 10.

5 Charities Act 1993 s 26(1) (amended by the Charities Act 2006 Sch 8 para 119). This provision is expressed to be subject to the Charities Act 1993 s 26(2)-(7) (see the text to note 10; and PARA 385): see s 26(1).

6 Charities Act 1993 s 26(1).

7 See eg *Report of the Charity Commissioners for England and Wales for 1978* (HC Paper (1979-80) no 94) paras 146-149; *Report of the Charity Commissioners for England and Wales for 1982* (HC Paper (1982-83) no 370) paras 90-96.

8 Eg a general authority to invest in land: see *Report of the Charity Commissioners for England and Wales for 1988* (HC Paper (1988-89) no 319) paras 73-75.

9 le without prejudice to the generality of the Charities Act 1993 s 26(1).

10 Charities Act 1993 s 26(2).

11 As to the Tribunal see PARA 573 et seq.

12 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

13 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 15).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(ii) Authorisation of Dealings by the Charity Commission/382. Directions as to expenditure.

382. Directions as to expenditure.

An order of the Charity Commission¹ authorising action in the administration of a charity² may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised³. Where anything is done under the authority of such an order, the directions are binding on the charity trustees⁴ for the time being as if contained in the trusts⁵ of the charity⁶. Any such directions may, on the application of the charity, be modified or superseded by a further order⁷. In particular, such directions include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction⁸.

1 As to the Charity Commission see PARAS 538-572.

2 le under the Charities Act 1993 s 26(1): see PARA 381. As to the meaning of 'charity' see PARA 1.

3 Charities Act 1993 s 26(3).

4 As to the meaning of 'charity trustees' see PARA 1 note 10.

5 As to the meaning of 'trusts' see PARA 217 note 5.

6 Charities Act 1993 s 26(3).

7 Charities Act 1993 s 26(3).

8 Charities Act 1993 s 26(4).

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383. Transactions affected by the disabling Acts or requiring a court order.

An order of the Charity Commission¹ authorising action in the administration of a charity² may also authorise any act notwithstanding that it is prohibited by disabling Act³, and notwithstanding that the trusts⁴ of the charity provide for the act to be done by or under the authority of the court⁵.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'charity' see PARA 1.

3 The Acts referred to as the disabling Acts are the Ecclesiastical Leases Act 1571 (repealed), the Ecclesiastical Leases Act 1572 (repealed), the Ecclesiastical Leases Act 1575 (repealed), and the Ecclesiastical Leases Act 1836 (see **ECCLESIASTICAL LAW** vol 14 PARA 1153 et seq); Charities Act 1993 s 26(6).

4 As to the meaning of 'trusts' see PARA 217 note 5.

5 Charities Act 1993 s 26(5). As to the meaning of 'court' see PARA 175 note 12.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(ii) Authorisation of Dealings by the Charity Commission/384. Transactions affected by a company director's breach of duty.

384. Transactions affected by a company director's breach of duty.

In the case of a charity that is a company¹, an order of the Charity Commission² authorising action in the administration of a charity³ may also authorise any act notwithstanding that it involves the breach of a duty imposed on a director of the company by the Companies Act 2006⁴.

1 As to the meaning of 'company' see PARA 227.

2 As to the Charity Commission see PARAS 538-572.

3 As to the meaning of 'charity' see PARA 1.

4 Ie under the Companies Act 2006 Pt 10 Ch 2: Charities Act 1993 s 26(5A) (added by the Companies Act 2006 s 181(4)).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(ii) Authorisation of Dealings by the Charity Commission/385. Acts which may not be authorised.

385. Acts which may not be authorised.

No order of the Charity Commission¹ authorising action in the administration of a charity² may authorise the doing of any act expressly prohibited by an Act of Parliament other than the disabling Acts³ or by the trusts of the charity⁴, or extend or alter the purposes of the charity⁵; nor may it confer any authority in relation to a building which has been consecrated and the use or disposal of which is regulated, and can be further regulated, by a scheme under the Pastoral Measure 1983⁶. The power of the Commission to authorise dealings with trust property⁷ is not, however, affected by the Redundant Churches and Other Religious Buildings Act 1969⁸.

- 1 As to the Charity Commission see PARAS 538-572.
- 2 As to the meaning of 'charity' see PARA 1. See PARA 381.
- 3 As to the disabling Acts see PARA 383 note 3.
- 4 See however PARA 384. As to the meaning of 'trusts' see PARA 217 note 5.
- 5 See the Charities Act 1993 s 26(5).
- 6 Charities Act 1993 s 26(7). The reference to a building is taken to include part of a building and any land which under such a scheme is to be used or disposed of with a building to which the scheme applies: s 26(7). Reference is also made in s 26(7) to schemes having effect under the Union of Benefices Measures 1923 to 1952, the Reorganisation Areas Measures 1944 and 1954, or the Pastoral Measure 1968 (all of which have been repealed).
- 7 See under the Charities Act 1993 s 26: see PARA 381 et seq.
- 8 See the Redundant Churches and Other Religious Buildings Act 1969 s 7(2); and **ECCLESIASTICAL LAW** vol 14 PARA 1134.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(ii) Authorisation of Dealings by the Charity Commission/386. Charge for agricultural improvements.

386. Charge for agricultural improvements.

The powers conferred by the Agricultural Holdings Act 1986 on landlords as regards charging land with the amount paid or expended as compensation for improvements¹ are not exercisable by trustees for charitable purposes except with the approval in writing of the Charity Commission².

- 1 See the Agricultural Holdings Act 1986 s 86(1)-(3); and **AGRICULTURAL LAND** vol 1 (2008) PARAS 477, 484.
- 2 Agricultural Holdings Act 1986 s 86(4) (amended by the Charities Act 2006 Sch 8 para 79). As to the Charity Commission see PARAS 538-572.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(iii) Advice by the Charity Commission/387. Power to give advice.

(iii) Advice by the Charity Commission

387. Power to give advice.

On the written application of any charity trustee¹, the Charity Commission² may give him its opinion or advice on any matter relating to the performance of any of his duties as such a trustee in relation to the charity concerned, or otherwise relating to the proper administration of the charity³. The accuracy of the Commission's opinion or advice may be challenged under the procedure set up under the Charities Act 1993⁴, but a common law action in negligence cannot be brought on the ground that the opinion or advice is not only wrong but was given negligently⁵.

- 1 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 2 As to the Charity Commission see PARAS 538-572.
- 3 Charities Act 1993 s 29(1) (s 29 substituted by the Charities Act 2006 s 24).
- 4 See the Charities Act 1993 s 33; and PARA 586 et seq.
- 5 *Mills v Winchester Diocesan Board of Finance* [1989] Ch 428, [1989] 2 All ER 317.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(iii) Advice by the Charity Commission/388. Consequences of acting on advice.

388. Consequences of acting on advice.

If the Charity Commission¹ gives its opinion or advice on the application of a charity trustee² with respect to a charity, then a charity trustee or trustee for the charity³ acting in accordance with the opinion or advice, whether made to him or another trustee, is deemed to have acted in accordance with his trust, as regards his responsibility for so acting⁴, unless, when he does so act, either he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts, or the decision of the court⁵ or the Tribunal⁶ has been obtained on the matter or proceedings are pending to obtain one⁷.

- 1 As to the Charity Commission see PARAS 538-572.
- 2 I.e. under the Charities Act 1993 s 29(1): see PARA 387. As to the meaning of 'charity trustees' see PARA 1 note 10.
- 3 As to the meaning of 'charity' see PARA 1.
- 4 Charities Act 1993 s 29(2) (s 29 substituted by the Charities Act 2006 s 24).
- 5 As to the meaning of 'court' see PARA 175 note 12.
- 6 As to the Tribunal see PARA 573 et seq.
- 7 See the Charities Act 1993 s 29(3) (as substituted: see note 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(iv) Execution of Documents/389. Power to delegate.

(iv) Execution of Documents

389. Power to delegate.

Subject to the trusts¹ of the charity, charity trustees² may confer on any of their body, not being less than two in number, a general authority or authority limited in such manner as the trustees think fit, to execute in the names and on behalf of the trustees assurances or other deeds or instruments for giving effect to transactions to which the trustees are a party³.

- 1 As to the meaning of 'trusts' see PARA 217 note 5.
- 2 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 3 See the Charities Act 1993 s 82(1). Any deed or instrument executed in pursuance of an authority so given is of the same effect as if executed by the whole body: s 82(1). This power is in addition to and not in derogation of any other power (eg the general power to act by a majority (see PARA 380)); s 82(5).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(iv) Execution of Documents/390. Manner of delegating authority.

390. Manner of delegating authority.

An authority to execute any deed or instrument¹ is sufficient if given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality which would otherwise be required². It may be given so that the powers conferred are exercisable by any of the trustees or may be restricted to named persons or in any other way³.

- 1 Ie under the Charities Act 1993 s 82(1): see PARA 389.
- 2 Charities Act 1993 s 82(2)(a).
- 3 Charities Act 1993 s 82(2)(b).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(2) POWERS OF CHARITY TRUSTEES/(iv) Execution of Documents/391. Effect of authority.

391. Effect of authority.

An authority to execute instruments on behalf of charity trustees¹ has effect, subject to any restriction expressed in it and until it is revoked, as a continuing authority given by the charity trustees from time to time of the charity² and exercisable by such trustees, notwithstanding any change in the charity trustees³. A deed or instrument executed in pursuance of such an authority has the same effect as if executed by all the trustees⁴. Such an authority also includes an implied authority to execute deeds and instruments in the name and on behalf of the official custodian for charities⁵, in cases where the charity trustees could do so⁶.

Where a deed or instrument purports to be executed in pursuance of such an authority, then in favour of a person who, then or afterwards, in good faith acquires for money or money's worth an interest in or charge on property or the benefit of a covenant or agreement expressed to be entered into by the charity trustees, it is presumed conclusively to have been duly executed under proper authority⁷.

- 1 Ie under the Charities Act 1993 s 82: see PARAS 389-390. As to the meaning of 'charity trustees' see PARA 1 note 10.
- 2 As to the meaning of 'charity' see PARA 1.
- 3 Charities Act 1993 s 82(2)(c).

4 Charities Act 1993 s 82(1).

5 As to the official custodian for charities see PARA 297 et seq.

6 Charities Act 1993 s 82(3). As to where the charity trustees can execute deeds and instruments on behalf of the official custodian for charities see PARA 301.

7 Charities Act 1993 s 82(4).

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(v) Preservation of Charity Documents

392. Enrolment and deposit of documents.

The Charity Commission¹ may provide books in which any deed, will and other document² relating to a charity³ may be enrolled⁴. It may also accept for safe keeping any document of or relating to a charity, and the charity trustees⁵ or other persons having the custody of such documents, including documents relating to a charity which has ceased to exist, may, with the consent of the Commission, deposit them with it for safe keeping, except in the case of documents required by some enactment other than the Charities Act 1993 to be kept elsewhere⁶. Regulations made by the Minister⁷ may make provision for such documents so deposited with the Commission as may be prescribed by the regulations to be destroyed or otherwise disposed of after such period or in such circumstances as may be so prescribed⁸.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'document' see PARA 260 note 2.

3 As to the meaning of 'charity' see PARA 1.

4 Charities Act 1993 s 30(1) (amended by the Charities Act 2006 Sch 8 para 122).

5 As to the meaning of 'charity trustees' see PARA 1 note 10.

6 Charities Act 1993 s 30(2) (amended by the Charities Act 2006 Sch 8 para 122).

7 As to the Minister see PARA 580.

8 Charities Act 1993 s 30(4) (amended by the Charities Act 2006 Sch 8 para 122; and SI 2006/6951). At the date at which this volume states the law, no such regulations had been made. This power applies also to any document transmitted to the Commission under the Charities Act 1993 s 9 and kept by it under s 9(3) (see PARA 557) as if the document had been deposited with them for safe keeping under s 30: s 30(5) (amended by the Charities Act 2006 Sch 8 para 122). As to evidence of such documents see PARA 393.

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393. Evidence of documents.

Evidence of the contents of a document enrolled by or deposited with the Charity Commission¹ may be given by means of a copy certified by any member of its staff generally or specially authorised by it to act for this purpose. A document² purporting to be such a copy must be received in evidence without proof of the official position, authority or handwriting of the person certifying it, or of the original document being enrolled or deposited³.

1 le under the Charities Act 1993 s 30: see PARA 392. As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'document' see PARA 260 note 2.

3 See the Charities Act 1993 s 30(3) (amended by the Charities Act 2006 Sch 8 para 122). This also applies to any document transmitted to the Commission under s 9 and kept by it under s 9(3) (see PARA 557) as if the document had been deposited with them for safe keeping under s 30: s 30(5) (amended by the Charities Act 2006 Sch 8 para 122).

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(vi) Notices

394. Service of notices.

All notices required or authorised by the trusts¹ of a charity² to be given to a charity trustee³, member or subscriber may be sent by post, addressed to any address given as his in the list of charity trustees, members or subscribers for the time being in use at the principal office of the charity⁴. If the charity trustee, member or subscriber has no address in the United Kingdom on that list, no notice of an election or meeting need be given even though required by the trusts of the charity⁵. Where any such notice required is given by post, it is deemed to have been given at the time when the letter containing it would be delivered in the ordinary course of post⁶.

1 As to the meaning of 'trusts' see PARA 217 note 5.

2 As to the meaning of 'charity' see PARA 1.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities Act 1993 s 81(1).

5 See the Charities Act 1993 s 81(3).

6 Charities Act 1993 s 81(2).

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(3) MANAGEMENT OF TRUST PROPERTY

(i) Disposal of Property

395. Restrictions on dispositions of charity land.

The Charities Act 1992 made new provisions with respect to restrictions on the disposition of land held in trust for a charity and on the charging of charity property, which are consolidated in the Charities Act 1993¹. The basic rule that no land held by or in trust for a charity may be conveyed, transferred, leased or otherwise disposed of without an order of the court or of the Charity Commission² is subject to important exceptions³, as a result of which many transactions can take place without an order being obtained. The basic rule does not apply to a disposition of such land if the disposition is made to a person who is not a connected person, or a trustee for, or nominee of, a connected person⁴. 'Connected person', in relation to a charity, means a person who, at the time of the disposition in question or, other than in the case of a disposition for which the contract was entered into before 28 February 2007⁵, at the time of any contract for the disposition in question, falls into any of the following categories⁶: (1) a charity trustee or trustee for a charity⁷; (2) a person who is the donor of any land to the charity⁸; (3) a child⁹, parent, grandchild, grandparent, brother or sister of any such trustee or donor¹⁰; (4) an officer, agent or employee of the charity¹¹; (5) the spouse¹² or civil partner¹³ of any person falling within any of heads (1) to (4) above¹⁴; (6) a person carrying on business in partnership with any person falling within any of the heads (1) to (5) above¹⁵, except in relation to any disposition for which the contract was entered into before 28 February 2007¹⁶; (7) an institution which is controlled¹⁷ by any person falling within any of heads (1) to (6) above, or by two or more such persons taken together¹⁸; or (8) a body corporate in which any connected person falling within any of heads (1) to (7) above has a substantial interest, or two or more such persons, taken together, have a substantial interest¹⁹.

Where the disposition is made to a person other than a connected person or a trustee for, or nominee of a connected person, an order is not required where, before entering into the agreement for the sale, or as the case may be, for the lease or other disposition of the land²⁰, the charity trustees comply with the following requirements²¹, namely, that they: (a) obtain and consider a written report on the proposed disposition from a qualified surveyor²² instructed by the trustees and acting exclusively for the charity²³; (b) advertise the proposed disposition for such period and in such manner as the surveyor has advised in his report²⁴; and (c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity²⁵.

The requirements are modified where the proposed disposition is the granting of a lease for a term ending not more than seven years after it is granted, other than one granted wholly or partly in consideration of a fine²⁶. In this case the above requirements²⁷ do not apply, but the charity trustees must, before entering into the agreement for the lease, obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice thereon²⁸. The charity trustees must also decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity²⁹.

Where any land is held by or in trust for a charity and the trusts³⁰ on which it is held stipulate that it is to be used for the purposes, or for any particular purposes, of the charity, the land must not be conveyed, transferred, leased or otherwise disposed of unless the charity trustees have before the relevant time³¹ previously given public notice of the proposed disposition, inviting representations to be made to them³², and taken into consideration any representations duly made to them about the proposed disposition³³. This requirement does not, however, apply if the disposition is to be effected with a view to acquiring by way of replacement other property to be held on the same trusts³⁴. Nor does it apply if the disposition is the granting of a lease for a term ending not more than two years after it is granted, other than one granted wholly or partly in consideration of a fine³⁵. Moreover, the Charity Commission may direct that

this requirement is not to apply to dispositions of land held by or in trust for a charity or class of charities³⁶, or that it is not to apply to a particular disposition of land held by or in trust for a charity³⁷. Such a direction may be given if, on an application made to it in writing by or on behalf of the charity or charities in question, the Commission is satisfied that it would be in the interests of the charity or charities for it to do so³⁸.

All these restrictions on disposition apply notwithstanding anything in the trusts of a charity³⁹. They do not apply, however, to: (i) any disposition for which general or special authority is expressly given⁴⁰ by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established⁴¹; or (ii) to any disposition of land held by or in trust for a charity which is made to another charity otherwise than for the best price that can reasonably be obtained, and is authorised to be so made by the trusts of the first mentioned charity⁴²; or (iii) to the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts, where the lease is granted otherwise than for the best rent that can reasonably be obtained and is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity⁴³.

None of the above provisions applies to any disposition of land held by or in trust for an exempt charity⁴⁴, to any disposition of land by way of mortgage or other security, or to any disposition of an advowson⁴⁵.

An application for the review of a decision of the Commission not to make such an order under the above provisions in relation to land held on or in trust for a charity lies to the Tribunal⁴⁶ at the instance of the Attorney General, the charity trustees of the charity, the charity itself (if a body corporate), and any other person who is or may be affected by the decision⁴⁷. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission⁴⁸.

1 See the Charities Act 1992 ss 32-36 (repealed): see now the Charities Act 1993 ss 36-39. Any provision establishing or regulating a particular charity and contained in, or having effect under, any Act of Parliament, or contained in the trusts of a charity, has ceased to have effect if and to the extent that it provides for dispositions of, or other dealings with, land in England and Wales held by or in trust for the charity to require the consent of the Charity Commissioners (now the Charity Commission), whether signified by order or otherwise: Charities Act 1992 s 36(1), (3) (repealed, but the effect of the repeal does not revive so much as of any document as ceased to have effect by virtue of that provision: Charities Act 2006 Sch 10 para 29(1), (2) (c)). Similarly, any provision of an order or scheme under the Education Acts 1944 (repealed: see now the Education Act 1996) or Education Act 1973 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1045) relating to a charity has ceased to have effect if and to the extent that it requires in relation to any sale, lease or other disposition of land in England or Wales held by or in trust for the charity, approval by the Commissioners (now the Commission) or the Secretary of State of the amount payable in respect of the sale, lease or disposition: Charities Act 1992 s 36(2), (3) (repealed, but the effect of the repeal does not revive so much as of any document as ceased to have effect by virtue of that provision: Charities Act 2006 Sch 10 para 29(1), (2)(c)). As to the Secretary of State see PARA 579.

2 Charities Act 1993 s 36(1) (amended by the Charities Act 2006 Sch 8 para 128; and SI 2006/2951). For these purposes, 'land' means land in England and Wales: Charities Act 1993 s 36(11). As to the meaning of 'court' see PARA 175 note 12.

3 I.e. the exceptions contained in the Charities Act 1993 ss 36(2)-(11), 40.

4 Charities Act 1993 s 36(2)(a).

5 See the Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309, art 6(2).

6 Charities Act 1993 s 36(2), Sch 5 para 1(1) (amended by the Charities Act 2006 Sch 8 para 178).

7 Charities Act 1993 Sch 5 para 1(2)(a). As to the meaning of 'charity trustees' see PARA 1 note 10. As to the meaning of 'charity' see PARA 1.

8 Charities Act 1993 Sch 5 para 1(2)(b). This applies whether the gift was made on or after the establishment of the charity: Sch 5 para 1(2)(b).

- 9 'Child' includes a stepchild and an illegitimate child: Charities Act 1993 Sch 5 para 2(1) (amended by the Charities Act 2006 Sch 8 para 178(5)(a)).
- 10 Charities Act 1993 Sch 5 para 1(2)(c).
- 11 Charities Act 1993 Sch 5 para 1(2)(d).
- 12 A person living with another as that person's husband or wife is treated as that person's spouse: Charities Act 1993 Sch 5 para 2(2) (amended by the Charities Act 2006 Sch 8 para 178(5)(b)).
- 13 Where two persons of the same sex are not civil partners but live together as if they were, each of them is treated as the civil partner of the other: Charities Act 1993 Sch 5 para 2(3) (added by the Charities Act 2006 Sch 8 para 178(5)(c)).
- 14 Charities Act 1993 Sch 5 para 1(2)(e).
- 15 Charities Act 1993 Sch 5 para 1(2)(ea) (added by the Charities Act 2006 Sch 8 para 178(4)).
- 16 Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309, art 6(2).
- 17 A person controls an institution if he is able to secure that the affairs of the institution are conducted in accordance with his wishes: Charities Act 1993 Sch 5 para 3 (amended by the Charities Act 2006 Sch 8 para 178(6)).
- 18 Charities Act 1993 Sch 5 para 1(2)(f).
- 19 Charities Act 1993 Sch 5 para 1(2)(g). A connected person has a substantial interest in a body corporate if the person or institution in question: (1) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital; or (2) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body: Sch 5 para 4(1) (amended by the Charities Act 2006 Sch 8 para 178(6)). The rules relating to the interpretation of 'connected person' set out in the Companies Act 2006 Sch 1 apply for the purposes of the Charities Act 1993 Sch 5 para 4(1) as they apply for the purposes of the Companies Act 2006 s 254, and the terms 'equity share capital' and 'share' have the same meaning as in that Act: Charities Act 1993 Sch 5 para 4(2), (3) (amended by SI 2007/2194). See **COMPANIES**.
- 20 This applies except where the proposed disposition is the granting of a lease for not more than seven years under the Charities Act 1993 s 36(5): see s 36(3).
- 21 Charities Act 1993 s 36(2), (3) (s 36(3) amended by the Charities Act 2006 Sch 8 para 178(6)).
- 22 A person is a qualified surveyor if (1) he is a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers or satisfies such other requirement or requirements as may be prescribed by regulations made by the Minister; and (2) he is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question: Charities Act 1993 s 36(4)(a), (b) (amended by SI 2006/2951). Any report must contain such information, and deal with such matters, as may be prescribed by regulations: Charities Act 1993 s 36(4). At the date at which this volume states the law no such regulations had been made under s 36(4) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, have effect as if made under it. As to the Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, see **PARA 396**.
- 23 Charities Act 1993 s 36(3)(a).
- 24 Charities Act 1993 s 36(3)(b). This provision applies unless the surveyor has advised in his report that it would not be in the best interests of the charity to advertise the proposed disposition: s 36(3)(b).
- 25 Charities Act 1993 s 36(3)(c).
- 26 Charities Act 1993 s 36(5) (amended by the Charities Act 2006 Sch 8 para 128(5)(b)).
- 27 Ie those under the Charities Act 1993 s 36(3): see the text and notes 23-25.
- 28 Charities Act 1993 s 36(5)(a).
- 29 Charities Act 1993 s 36(5)(b).

30 As to the meaning of 'trusts' see PARA 217 note 5.

31 Where the charity trustees enter into an agreement for the sale or, as the case may be, for the lease or other disposition then the 'relevant time' means the time when they enter into that agreement; in any other case 'relevant time' means the time of the disposition: see the Charities Act 1993 s 36(6A) (added by the Charities Act 2006 Sch 8 para 128(6)).

The requirement that the public notice must be given at the relevant time does not apply in relation to any sale, lease or other disposition where before 27 February 2007 the charity trustees have entered into an agreement for the disposition: Charities Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2007, SI 2007/309, art 6(1).

32 The notice must specify a time within which representations must be made, being not less than one month from the date of the notice: Charities Act 1993 s 36(6)(i).

33 Charities Act 1993 s 36(6) (amended by Charities Act 2006 Sch 8 para 128(5)). This provision is expressed to be subject to the Charities Act 1993 s 36(7), (8): see s 36(6).

34 Charities Act 1993 s 36(7)(a).

35 Charities Act 1993 s 36(7)(b).

36 Whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction: Charities Act 1993 s 36(8)(a).

37 Charities Act 1993 s 36(8)(a), (b).

38 Charities Act 1993 s 36(8) (amended by the Charities Act 2006 Sch 128(7)).

39 Charities Act 1993 s 36(9).

40 Without the authority being made subject to the sanction of an order of the court: Charities Act 1993 s 36(9)(a).

41 Charities Act 1993 s 36(9)(a). See also *Sales of land: Powers of sale and leasing conferred by scheme and the effect of sections 36(1) of the Charities Act 1992 and 36(9)(a) of the Charities Act 1993 (1994)* Decisions of the Charity Commissioners (1997) vol 5 p 21.

42 Charities Act 1993 s 36(9)(b).

43 Charities Act 1993 s 36(9)(c).

44 As to exempt charities see PARAS 315-317.

45 Charities Act 1993 s 36(10). As to advowsons see **ECCLESIASTICAL LAW** vol 14 PARA 776.

46 As to the Tribunal see PARA 573 et seq.

47 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

48 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 47).

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396. Information to be contained in, and matters to be dealt with by, qualified surveyors' reports.

A surveyor's report prepared for the purposes of enabling the disposal of land held by or in trust for a charity¹ (otherwise than with an order of the court or of the Charity Commission²)

must contain such information and deal with such matters as are prescribed³ together with such other information and such other matters as the surveyor⁴ believes should be drawn to the attention of the charity trustees⁵. The report must contain a description of the relevant land⁶ and its location, which includes the measurements of the relevant land, its current use, the number of buildings, if any, included in the relevant land, the measurements of any such buildings, and the number of rooms in any such buildings and the measurements of those rooms⁷. Where any such information required may be clearly given by means of a plan, it may be so given and any such plan need not be drawn to scale⁸.

Further information required includes whether the relevant land, or any part of it, is leased by or from the charity trustees and, if it is, details of⁹:

- 299 (1) the length of the lease and the period of it which is outstanding¹⁰;
- 300 (2) the rent payable under the lease¹¹;
- 301 (3) any service charge which is so payable¹²;
- 302 (4) the provisions in the lease for any review of the rent payable under it or any service charge so payable¹³;
- 303 (5) the liability under the lease for repairs and dilapidations¹⁴; and
- 304 (6) any other provision in the lease which, in the opinion of the surveyor, affects the value of the relevant land¹⁵.

The report must further provide information on whether the relevant land is subject to the burden of, or enjoys the benefit of, any easement or restrictive covenant¹⁶ or is subject to any annual or other periodic sum charged on, or issuing out of, the land except rent reserved by a lease or tenancy¹⁷. It must deal with whether any buildings included in the relevant land are in good repair and, if not, the surveyor's advice: (a) as to whether or not it would be in the best interests of the charity for repairs to be carried out prior to the proposed disposition; (b) as to what those repairs, if any, should be; and (c) as to the estimated cost of any repairs he advises¹⁸. The report must also include where, in the opinion of the surveyor, it would be in the best interests of the charity to alter any buildings included in the relevant land prior to disposition, because, for example, adaptations to the buildings for their current use are not such as to command the best market price on the proposed disposition, that opinion and an estimate of the outlay required for any alterations which he suggests¹⁹.

The report must further contain advice as to the manner of disposing of the relevant land so that the terms on which it is disposed of are the best that can reasonably be obtained for the charity, including²⁰:

- 305 (i) where appropriate, a recommendation that the land should be divided for the purposes of the disposition²¹;
- 306 (ii) unless the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, the period for which and the manner in which the proposed disposition should be advertised²²;
- 307 (iii) where the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, his reasons for that advice, for example, that the proposed disposition is the renewal of a lease to someone who enjoys statutory protection or that he believes someone with a special interest in acquiring the relevant land will pay considerably more than the market price for it²³; and
- 308 (iv) any view the surveyor may have on the desirability or otherwise of delaying the proposed disposition and, if he believes such delay is desirable, what the period of that delay should be²⁴.

Where the surveyor feels able to give such advice and where such advice is relevant, the report must contain advice as to the chargeability or otherwise of value added tax on the proposed disposition and the effect of such advice on the valuations given under heads (A) to (E) below²⁵. Where either the surveyor does not feel able to give such advice or such advice is not in his opinion relevant, a statement to that effect must be included in the report²⁶.

The report must also include the surveyor's opinion as to:

- 309 (A) the current value of the relevant land having regard to its current state of repair and current circumstances, such as the presence of a tenant who enjoys statutory protection, or, where the proposed disposition is a lease, the rent which could be obtained under it having regard to such matters²⁷;
- 310 (B) what the value of the relevant land or what the rent under the proposed disposition would be where he has given advice²⁸ if that advice is followed, or where he has expressed an opinion²⁹ if that opinion is acted upon, or if both that advice is followed and that opinion is acted upon³⁰;
- 311 (C) where he has made a recommendation under head (i) above, the increase in the value of the relevant land or rent in respect of it if the recommendation were followed³¹;
- 312 (D) where his advice is that it would not be in the best interests of the charity to advertise the proposed disposition because he believes a higher price can be obtained by not doing so, the amount by which that price exceeds the price that could be obtained if the proposed disposition were advertised³²; and
- 313 (E) where he has advised a delay in the proposed disposition under head (iv) above, the amount by which he believes the price which could be obtained consequent on such a delay exceeds the price that could be obtained without it³³.

Where the surveyor is of the opinion that the proposed disposition is not in the best interests of the charity because it is not a disposition that makes the best use of the relevant land, the report must include that opinion and the reasons for it, together with his advice as to the type of disposition which would constitute the best use of the land, including such advice as may be relevant as to the prospects of buying out any sitting tenant or of succeeding in an application for change of use of the land³⁴ under the laws relating to town and country planning³⁵.

1 Ie a report for the purposes of the Charities Act 1993 s 36(3) (see PARA 395) or where the Charities Act 1993 s 36(5) (see PARA 395) applies: Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, reg 2; Interpretation Act 1978 s 17(2)(b). As to the meaning of 'charity' see PARA 1.

2 As to the Charity Commission see PARAS 538-572.

3 Ie prescribed by the Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, reg 2, Schedule: see the text and notes 7-35.

4 'Surveyor' means the qualified surveyor from whom such a report is being obtained: Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, reg 1(2).

5 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, reg 2. As to the meaning of 'charity trustees' see PARA 1 note 10.

6 'Relevant land' means the land in respect of which a report is being obtained for the purposes of the Charities Act 1993 s 36(3) (see PARA 395): Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, reg 1(2); Interpretation Act 1978 s 17(2)(b).

7 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 1(1).

8 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 1(2).

9 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 2.

- 10 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 2(a).
- 11 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 2(b).
- 12 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 2(c).
- 13 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 2(d).
- 14 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 2(e).
- 15 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 2(f).
- 16 As to easements and restrictive covenants see **EASEMENTS AND PROFITS A PRENDRE**.
- 17 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 3.
- 18 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 4.
- 19 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 5.
- 20 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 6.
- 21 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 6(a).
- 22 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 6(b).
- 23 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 6(c).
- 24 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 6(d).
- 25 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 7(1).
- 26 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 7(2).
- 27 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 8(a).
- 28 Ie under the Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 4: see the text to note 18.
- 29 Ie under the Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 5: see the text to note 19.
- 30 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 8(b).
- 31 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 8(c).
- 32 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 8(d).
- 33 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 8(e).
- 34 As to a material change of use of the land see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 222.
- 35 Charities (Qualified Surveyors' Reports) Regulations 1992, SI 1992/2980, Schedule para 9. See generally **TOWN AND COUNTRY PLANNING**.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(3) MANAGEMENT OF TRUST PROPERTY/(i) Disposal of Property/397. Supplementary provisions relating to dispositions of charity land.

397. Supplementary provisions relating to dispositions of charity land.

Any contract for the sale, or for a lease or other disposition, of land¹ which is held by or in trust for a charity², and any conveyance, transfer, lease or other instrument effecting a disposition of

such land³, must state: (1) that the land is held by or in trust for a charity⁴; (2) whether the charity is an exempt charity⁵ and whether the disposition is one excepted⁶ from the statutory restrictions⁷; and (3) if it is not an exempt charity and the disposition is not one so excepted, that the land is land to which the statutory restrictions⁸ apply⁹.

Where any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of, the charity trustees¹⁰ must certify in the instrument by which the disposition is effected¹¹: (a) in a case where an order of the court or of the Charity Commission is required¹², that the disposition has been sanctioned by an order of the court or of the Commission, as the case may be¹³; or (b) in a case where such an order is not required¹⁴, that the charity trustees have power under the trusts of the charity to effect the disposition, and that they have complied with the statutory provisions so far as applicable to it¹⁵. In the case of a duly certified disposition it is conclusively presumed, in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money's worth that the facts were as stated in the certificate¹⁶.

Where a disposition is not duly certified¹⁷, and any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of by a disposition to which these provisions apply¹⁸, the disposition will nevertheless be valid in favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money's worth¹⁹. This is so whether or not the disposition has been sanctioned by an order of the court or of the Commission, or whether or not the charity trustees have power under the trusts of the charity to effect the disposition and have complied with the statutory provisions so far applicable to it²⁰.

Any contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and any conveyance, transfer, lease or other instrument effecting a disposition of such land²¹ must state: (i) that the land will, as a result of the disposition, be held by or in trust for a charity²²; (ii) whether the charity is an exempt charity²³; and (iii) if it is not an exempt charity, that the statutory restrictions on disposition²⁴ will apply to the land²⁵.

There are additional provisions in relation to the Land Registration Act 2002. Where the disposition to be effected by any such conveyance, transfer, lease or other instrument effecting a disposition of such land will be a registrable disposition²⁶ or a disposition which triggers the requirement of registration²⁷, the statement which is to be contained in the instrument must be in such form as may be prescribed by land registration rules²⁸. Where the registrar approves an application for registration of a disposition of registered land, or a person's title under a disposition of unregistered land, and the instrument effecting the disposition contains a statement complying with provisions above²⁹, he must enter in the register a restriction reflecting the limitation under the Charities Act 1993 on subsequent disposal³⁰. Where any such restriction is entered in the register in respect of any land, and the charity by or in trust for which the land is held becomes an exempt charity, the charity trustees must apply to the registrar for the removal of the entry³¹. On receiving any application duly made, the registrar must remove the entry³². Conversely, where any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity, or where any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity), the charity trustees must apply to the registrar for the entry of a restriction in the prescribed form and, on receiving an application duly made, the registrar must enter it accordingly³³.

Where there is a conveyance of land³⁴ held on charitable trusts, if neither of the mandatory provisions for inclusion in contracts and dispositive instruments³⁵ or mortgages³⁶ applies the conveyance must state the land is held on such trusts and if neither of these provisions has been complied with in relation to the conveyance and a purchaser has notice that the land is held on such trusts, he must see that any consents or orders necessary to authorise the transaction have been obtained³⁷.

- 1 For these purposes, references to a disposition of land do not include references to a disposition of land by way of mortgage or other security, any disposition of an advowson, or any release of a rentcharge falling within the Charities Act 1993 s 40(1) (see PARA 400): s 37(11)(a). 'Land' means land in England and Wales and s 37(7): s 37(11)(b). As to advowsons see **ECCLESIASTICAL LAW** vol 14 PARA 776.
- 2 As to the meaning of 'charity' see PARA 1.
- 3 Charities Act 1993 s 37(1)(a), (b).
- 4 Charities Act 1993 s 37(1)(i).
- 5 As to exempt charities see PARA 315.
- 6 le excepted by the Charities Act 1993 s 36(9)(a), (b) or (c): see PARA 395 text and notes 40-45.
- 7 Charities Act 1993 s 37(1)(ii). The statutory restrictions referred to in the text are the restrictions contained in s 36 (see PARA 395): see s 37(1)(ii).
- 8 See note 7.
- 9 Charities Act 1993 s 37(1)(iii). As to the form of statement required see the Land Registration Rules 2003, SI 2003/1417, r 180(1); and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 889.
- 10 le by a disposition falling within the Charities Act 1993 s 36(1) or (2): see PARA 395. As to the meaning of 'charity trustees' see PARA 1 note 10.
- 11 Charities Act 1993 s 37(2) (amended by the Charities Act 2006 Sch 8 para 129).
- 12 le where the case falls within the Charities Act 1993 s 36(1): see PARA 395. As to the Charity Commission see PARAS 538-572. As to the meaning of 'court' see PARA 175 note 12.
- 13 Charities Act 1993 s 37(2)(a) (amended by the Charities Act 2006 Sch 8 para 129).
- 14 le where the case falls within the Charities Act 1993 s 36(2): see PARA 395.
- 15 Charities Act 1993 s 37(2)(b).
- 16 See the Charities Act 1993 s 37(3).
- 17 le under the Charities Act 1993 s 37(2): see the text and notes 10-15.
- 18 le under the Charities Act 1993 s 36(1), (2): see PARA 395.
- 19 Charities Act 1993 s 37(4) (amended by the Charities Act 2006 Sch 8 para 129). This does not make a disposition valid unless it is a disposition to which the Charities Act 1993 s 36(1) or s 36(2) applies: *Bayoumi v Women's Total Abstinence Educational Union Ltd* [2003] EWCA Civ 1548, [2004] Ch 46.
- 20 Charities Act 1993 s 37(4) (amended by the Charities Act 2006 Sch 8 para 129).
- 21 Charities Act 1993 s 37(5)(a), (b).
- 22 Charities Act 1993 s 37(5)(i).
- 23 Charities Act 1993 s 37(5)(ii).
- 24 le imposed by the Charities Act 1993 s 36: see PARA 395. The provisions of s 36, subject to s 36(9), apply to the land: s 37(5).
- 25 Charities Act 1993 s 37(5). As to the form of statement required see the Land Registration Rules 2003, SI 2003/1417, r 179; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 889.
- 26 As to registrable dispositions see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 911 et seq.
- 27 As to dispositions triggering the requirement of registration see **LAND REGISTRATION**.

28 Charities Act 1993 s 37(7) (substituted by the Land Registration Act 2002 Sch 11 para 29(2)). The Charities Act 1993 s 37(7) is to be construed as one with the Land Registration Act 2006: Charities Act 1993 s 37(11) (amended by the Land Registration Act 2002 Sch 11 para 29(4)); and see **LAND REGISTRATION**.

29 See the Charities Act 1993 s 37(5) and (7) (substituted by the Land Registration Act 2002 Sch 11 para 29(2)); see the text and notes 21-28.

30 Charities Act 1993 s 37(8) (substituted by the Land Registration Act 2002 Sch 11 para 29(2)). The Charities Act 1993 s 37(8) is to be construed as one with the Land Registration Act 2006: Charities Act 1993 s 37(11) (as amended: see note 28); and see **LAND REGISTRATION**.

31 Charities Act 1993 s 37(9) (amended by the Land Registration Act 2002 Sch 11 para 29(3)).

32 Charities Act 1993 s 37(9) (as amended: see note 31). Section 37(9) is to be construed as one with the Land Registration Act 2006: Charities Act 1993 s 37(11) (as amended: see note 28); and see **LAND REGISTRATION**.

33 Charities Act 1993 s 37(10). Section 37(10) is to be construed as one with the Land Registration Act 2006: Charities Act 1993 s 37(11) (as amended: see note 28); and see **LAND REGISTRATION**.

34 This applies to land other than land to which the Universities and College Estates Act 1925 applies (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379); Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1 para 4(1).

35 See the Charities Act 1993 s 37(1): see the text and notes 1-9.

36 See the Charities Act 1993 s 39(1): see PARA 399.

37 See the Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 4(1), (2); and **SETTLEMENTS** vol 42 (Reissue) PARA 677. Where any trustees or the majority of any set of trustees have power to transfer or create any legal estate in the land, the estate must be transferred or created by them in the names and on behalf of the persons in whom it is vested: Sch 1 para 4(3).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(3) MANAGEMENT OF TRUST PROPERTY/(i) Disposal of Property/398. Restrictions on mortgaging charity land.

398. Restrictions on mortgaging charity land.

The basic rule is that no mortgage¹ of land² held by or in trust for a charity³ is to be granted without an order of the court⁴ or of the Charity Commission⁵. However, this does not apply⁶ to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the following relevant matters or matter, as the case may be⁷:

- 314 (1) in the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are (a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant; (b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and (c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant⁸;
- 315 (2) in the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes⁹.

Head (1), or as the case may be, head (2) applies in relation to such a mortgage as is mentioned therein whether the mortgage would only have effect to secure the repayment of

the proposed loan or grant or the discharge of the proposed obligation, or would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution¹⁰.

Where the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity having obtained and considered the proper advice¹¹ and the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution¹², then the charity trustees must not after that date enter into any transaction involving the payment of any such sums, or the undertaking of any such obligations, unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in head (1) or (2) above, as the case may be¹³.

For these purposes, proper advice is the advice of a person who is reasonably believed by the charity trustees to be qualified by his ability in and practical experience of financial matters, and who has no financial interest in relation to the loan, grant or other transaction in connection with which his advice is given¹⁴. Such advice may constitute proper advice notwithstanding that the person giving it does so in the course of his employment as an officer or employee of the charity or of the charity trustees¹⁵.

These provisions apply notwithstanding anything in the trusts¹⁶ of a charity, but they do not apply to a mortgage for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established¹⁷.

An application for the review of a decision of the Commission not to make an order in relation to a mortgage of land held by or in trust for a charity¹⁸ lies to the Tribunal¹⁹ at the instance of the Attorney General, the charity trustees of the charity and the charity itself (if a body corporate) and any other person who is or may be affected by the decision²⁰. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission²¹.

1 'Mortgage' includes a charge: Charities Act 1993 s 38(6). As to mortgages generally see **MORTGAGE**.

2 For these purposes, 'land' means land in England and Wales: Charities Act 1993 s 38(6).

3 As to the meaning of 'charity' see **PARA 1**.

4 As to the meaning of 'court' see **PARA 175** note 12.

5 Charities Act 1993 s 38(1) (amended by the Charities Act 2006 Sch 8 para 130). Nothing in the Charities Act 1993 s 38 applies to an exempt charity: s 38(7). As to exempt charities see **PARA 315**. See also s 36, which removes certain requirements under statutory provisions for consent to dealings with charity land; and **PARA 395** note 1. As to the Charity Commission see **PARAS 538-572**.

6 Charities Act 1993 s 38(1) (as amended: see note 5).

7 Charities Act 1993 s 38(2) (s 38(2), (3) substituted and s 38(2A)-(3D) added by the Charities Act 2006 s 27(1), (2)).

8 Charities Act 1993 s 38(3) (as substituted: see note 7).

9 Charities Act 1993 s 38(3A) (as added: see note 7).

10 Charities Act 1993 s 38(3B) (as added: see note 7).

11 Ie under the Charities Act 1993 s 38(2).

12 Charities Act 1993 s 38(3C) (as added: see note 7).

13 Charities Act 1993 s 38(3D) (as added: see note 7).

- 14 Charities Act 1993 s 38(4) (amended by the Charities Act 2006 s 27(1), (3)).
- 15 Charities Act 1993 s 38(4).
- 16 As to the meaning of 'trusts' see PARA 217 note 5.
- 17 Charities Act 1993 ss 36(9)(a), 38(5).
- 18 le under the Charities Act 1993 s 38.
- 19 As to the Tribunal see PARA 573 et seq.
- 20 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 21 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 20).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(3) MANAGEMENT OF TRUST PROPERTY/(i) Disposal of Property/399. Supplementary provisions relating to mortgaging of charity land.

399. Supplementary provisions relating to mortgaging of charity land.

Any mortgage¹ of land² held by or in trust for a charity³ must state⁴: (1) that the land is held by or in trust for a charity⁵; (2) whether the charity is an exempt charity⁶ and whether the mortgage is one for which general or special authority is expressly given⁷ (without the authority being made subject to the sanction of an order of the court) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established⁸; and (3) if it is not an exempt charity and it does not fall within head (2) above, that the mortgage is one to which the statutory restrictions⁹ apply¹⁰.

Where any such mortgage will be one falling within the statutory provisions relating to the requirements of compulsory registration¹¹ the statement required¹² must be in such form as may be prescribed by land registration rules and, if the charity is not an exempt charity, the mortgage must also contain a statement, in such form as may be prescribed by land registration rules, that the restrictions on disposition¹³ apply to the land¹⁴. Where the registrar approves an application for registration of person's title to land in connection with such a mortgage, the mortgage contains statements complying with the above provisions¹⁵ and the charity is not an exempt charity, the registrar must enter in the register a restriction reflecting the limitation on subsequent disposal¹⁶.

Where the restrictions on mortgaging¹⁷ apply to any mortgage of land held by or in trust for a charity, the charity trustees¹⁸ must certify in the mortgage: (a) in the case where an order of the court¹⁹ or the Charity Commission²⁰ is required²¹, that the mortgage has been sanctioned by an order of the court or of the Commission²²; or (b) in a case where such an order is not required²³, that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered proper advice²⁴. In the case of a duly certified mortgage it is conclusively presumed, in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, that the facts were as stated in the certificate²⁵. Where a disposition is not duly certified, and the restrictions on mortgaging²⁶ apply to any mortgage of land held by or in trust for a charity it will nevertheless be valid in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth²⁷. This is so whether or not the mortgage has been sanctioned by an order of the court or of the Commission, or whether or not the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered proper advice²⁸.

Where the statutory provisions concerning obtaining and considering proper advice before entering into any transaction involving the repayment of sums paid by way of loan or grant or the undertaking of obligations in relation to a mortgage which has effect to secure such repayment, or the discharge of such obligations, after the date of its execution apply²⁹, the charity trustees must certify in relation to any such transaction that they have obtained and considered such advice as is mentioned in those provisions³⁰.

1 'Mortgage' includes a charge, and 'mortgagee' is to be construed accordingly: Charities Act 1993 s 39(6). As to mortgages generally see **MORTGAGE**.

2 For these purposes, 'land' means land in England and Wales: Charities Act 1993 s 39(6).

3 As to the meaning of 'charity' see **PARA 1**.

4 Charities Act 1993 s 39(1). Where the mortgage will be a registered disposition the statement must be in such form as may be prescribed by land registration rules: s 39(1) (amended by the Land Registration Act 2002 Sch 11 para 29(5)). As to the meanings of 'prescribed' and 'registered disposition' see **LAND REGISTRATION**. The Charities Act 1993 s 39(1)-(1B) is to be construed as one with the Land Registration Act 2006: Charities Act 1993 s 39(6) (amended by the Land Registration Act 2002 Sch 11 para 29(7)); and see **LAND REGISTRATION**.

As to a conveyance of land held on charitable trusts see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1 para 4; and **PARA 397**.

5 Charities Act 1993 s 39(1)(a).

6 As to exempt charities see **PARA 315**.

7 Is a mortgage falling within the Charities Act 1993 s 38(5): see **PARA 398**.

8 Charities Act 1993 ss 36(9)(a), 39(1)(b).

9 Is those imposed by the Charities Act 1993 s 38: see **PARA 398**.

10 Charities Act 1993 s 39(1)(c).

11 Is the Land Registration Act 2002 s 4(1)(g): see **LAND REGISTRATION**.

12 Is under the Charities Act 1993 s 39(1): see the text and notes 4-10.

13 Is imposed under the Charities Act 1993 s 36: see **PARA 395**. The provisions of s 36, subject to s 36(9), apply to the land: s 39(1A) (s 39(1A)-(1C) substituted by the Land Registration Act 2002 Sch 11 para 29(6)).

14 Charities Act 1993 s 39(1A) (as substituted: see note 13). Section 39(1A) is to be construed as one with the Land Registration Act 2002: Charities Act 1993 s 39(6) (amended by the Land Registration Act 2002 Sch 11 para 29(7)); and see **LAND REGISTRATION**.

15 Is the Charities Act 1993 s 39(1), (1A) (s 39(1A) as substituted: see note 13): see the text and notes 2-14.

16 Charities Act 1993 s 39(1B) (as substituted: see note 13). Section s 37(9) applies in relation to any restriction entered under s 39(1B) as it applies in relation to any restriction entered under s 37(8) (see **PARA 397**): s 39(1C) (as so substituted).

17 Is the Charities Act 1993 s 38(1), (2): see **PARA 398**.

18 As to the meaning of 'charity trustees' see **PARA 1** note 10.

19 As to the meaning of 'court' see **PARA 175** note 12.

20 As to the Charity Commission see **PARAS 538-572**.

21 Is where the Charities Act 1993 s 38(1) applies: see **PARA 398**.

22 Charities Act 1993 s 39(2)(a) (amended by the Charities Act 2006 Sch 8 para 131(2)).

23 Is where the Charities Act 1993 s 38(2) applies: see **PARA 398**.

24 Charities Act 1993 s 39(2)(b). The reference to proper advice is a reference to the advice mentioned in s 38(2) (see PARA 398 text to notes 6-7): see s 39(2).

25 Charities Act 1993 s 39(3).

26 Ie under the Charities Act 1993 s 38(1), (2): see PARA 398.

27 Charities Act 1993 s 39(4) (amended by the Charities Act 2006 Sch 8 para 131(2)).

28 Charities Act 1993 s 39(4) (as amended: see note 27). The reference to proper advice is a reference to the advice mentioned in s 38(2) (see PARA 398 text to notes 6-7): see s 39(4) (as so amended).

29 Ie under the Charities Act 1993 s 38(3D): see PARA 398.

30 Charities Act 1993 s 39(4A) (s 39(4A)-(4B) added by the Charities Act 2006 Sch 8 para 131(3)). Where the Charities Act 1993 s 39(4A) has been complied with in relation to any transaction, then, in favour of a person who (whether under the mortgage or afterwards) has acquired or acquires an interest in the land for money or money's worth, it is conclusively presumed that the facts were as stated in the certificate: s 39(4B) (as so added).

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400. Release of charity rentcharges.

The restrictions on the disposition of charity land¹ do not apply to the release by a charity of a rentcharge which it is entitled to receive if the release is given in consideration of the payment of an amount which is not less than ten times the annual amount of the rentcharge², nor do they apply where a rentcharge which a charity is entitled to receive is redeemed under the provisions of the Rentcharges Act 1977³. Where a charity which is entitled to receive a rentcharge releases it in consideration of the payment of an amount not exceeding £1,000⁴, any costs incurred by the charity in connection with proving its title are recoverable by the charity from the person or persons in whose favour the rentcharge is being released, but this provision does not apply where a rentcharge which a charity is entitled to receive is redeemed under the provisions of the Rentcharges Act 1977⁵.

1 Ie those contained in the Charities Act 1993 s 36(1): see PARA 395. As to the meaning of 'charity' see PARA 1.

2 Charities Act 1993 s 40(1).

3 Ie the Rentcharges Act 1977 ss 8-10: see **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARAS 900-902.

4 The specified sum may be altered by the Minister by order: Charities Act 1993 s 40(4) (amended by SI 2006/2951). As to the making of orders generally see the Charities Act 1993 s 86; and PARA 584. As to the Minister see PARA 580.

5 Charities Act 1993 s 40(2), (3) (s 40(2) amended by SI 2009/508). The provisions of the Rentcharges Act 1977 referred to in the text are ss 8-10 (see **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARAS 900-902): Charities Act 1993 s 40(3).

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401. Powers to deal with charity land in relation to the Chequers Estate Act 1917 and the Chevening Estate Act 1959.

In relation to the deed of settlement set out in the Chequers Estate Act 1917¹ or the trust instrument set out in the Chevening Estate Act 1959², all land vested or to be vested in trustees on or for charitable, ecclesiastical or public trusts or purposes is deemed to be settled land³, and in relation to that land the trustees have all the powers conferred by the Settled Land Act 1925 on a tenant for life and on the trustees of a settlement⁴. Where the land is vested in persons having no powers of management, the Settled Land Act powers are exercisable by the managing trustees or committee of management, and the persons in whom the land is vested are not liable for giving effect to directions given by the managing trustees or committee⁵. The Settled Land Act powers are exercisable subject to obtaining any consents or orders which would, apart from that Act, have been required for the exercise of an express power under the trust instrument⁶. These provisions of the Settled Land Act do not affect the jurisdiction of the court, Charity Commission, or other competent authority in regard to the administration of charitable and other trusts⁷.

Any conveyance of land held on charitable, ecclesiastical or public trusts must state that the land is held on such trusts⁸.

1 In the Chequers Estate Act 1917 s 1, Schedule.

2 In the Chevening Estate Act 1959 s 1, Schedule.

3 In the purposes of the Settled Land Act 1925 s 29 (repealed) (see note 4); see *Re Booth and Southend-on-Sea Estate Co's Contract* [1927] 1 Ch 579.

4 See the Settled Land Act 1925 s 29(1). Section 29 is repealed, except in relation to the deed of settlement set out in the Chequers Estate Act 1917 s 1, Schedule or the trust instrument set out in the Chevening Estate Act 1959 s 1, Schedule: Trusts of Land and Appointment of Trustees Act 1996 s 25(3). As to the powers under the Settled Land Act 1925 see PARAS 404-407. Section 29 does not apply to consecrated land and buildings vested in an incumbent during his incumbency: *Re St Swithin's, Norwich* [1960] P 77, [1959] 3 All ER 301, Consistory Ct; and see **ECCLESIASTICAL LAW** vol 14 PARA 1074.

5 See the Settled Land Act 1925 s 29(2) (amended by the Charities Act 1960 s 48(2), Sch 7 Pt I (repealed)). Where trustees, or a majority of them, have power to transfer or create any legal estate, it must be transferred or created by them in the names of the persons in whom the legal estate is vested: Settled Land Act 1925 s 29(5) (amended by the Charities Act 1960 s 48(2), Sch 7 Pt I (repealed)).

6 See the Settled Land Act 1925 s 29(2). Thus, an order of the court or of the Charity Commission is sometimes required before the Settled Land Act powers may be exercised: see the Charities Act 1993 s 36; and PARA 395. Where a disposition or dealing is to be effected for less than full consideration in money, or where any interest in land is to be acquired, the same consent or order, if any, is required as if the intended transaction were a sale: Settled Land Act 1925 s 29(2) proviso. As to the Charity Commission see PARAS 538-572.

7 See the Charities Act 1993 s 29(3).

8 Charities Act 1993 s 29(1).

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402. Express powers.

Where a trust deed gives to the trustees powers of disposal wider than those under the Settled Land Act 1925, they are not cut down by that Act, nor need they be exercised in accordance with the provisions of that Act as if they were additional powers comprised in a settlement¹. Nothing in that Act converts revenue into capital money². The statutory restrictions on dispositions of charity land apply notwithstanding anything in the trusts of the charity³.

Regulations made by the founders of old charities that rents should not be increased have been held ineffective in changed circumstances⁴, but regulations fixing the maximum duration of leases were generally upheld⁵.

1 *Re Booth and Southend-on-Sea Estate Co's Contract* [1927] 1 Ch 579 (power for a sole trustee to give a good receipt for purchase money).

2 *Re Booth and Southend-on-Sea Estate Co's Contract* [1927] 1 Ch 579 at 588 per Astbury J.

3 See the Charities Act 1993 s 36(9); and PARA 395.

4 *Watson v Hinsworth Hospital* (1707) 2 Vern 596; *A-G v Catherine Hall, Cambridge* (1820) Jac 381.

5 *A-G v Griffith* (1807) 13 Ves 565; *Watson v Master, etc of Hemsworth Hospital* (1807) 14 Ves 324.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(3) MANAGEMENT OF TRUST PROPERTY/(i) Disposal of Property/403. Powers at common law.

403. Powers at common law.

Before the disposition of charity land was regulated by statute¹ it was held that charitable corporations and trustees had power to sell, lease or mortgage charity land, but that the transaction was liable to be set aside unless it was shown to be beneficial to the charity, the onus to establish that being on the purchaser². It may be that transactions relating to property which could be dealt with as income were not vulnerable in this way³.

It is not clear whether the statutory powers supersede the powers which existed at common law, but it is not safe for a purchaser to rely on the common law powers as authorising a transaction. In the absence of statutory power, special authority may be granted by the Charity Commission⁴.

1 Ie before the Charitable Trusts Amendment Act 1855 (repealed).

2 See eg *A-G v Warren* (1818) 2 Swan 291; *President etc of St Mary Magdalen College, Oxford v A-G* (1857) 6 HL Cas 189; *A-G v South Sea Co* (1841) 4 Beav 453; *A-G v Brettingham* (1840) 3 Beav 91; *Re Clergy Orphan Corp'n* [1894] 3 Ch 145, CA.

3 See *Re Clergy Orphan Corp'n* [1894] 3 Ch 145 at 154, CA, obiter per Davey J.

4 Ie under the Charities Act 1993 s 26: see PARA 381. As to the Charity Commission see PARAS 538-572.

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404. Statutory powers: sale and exchange.

The Settled Land Act powers enjoyed by charity trustees include power to sell the land, any part of it or any easement, right or privilege of any kind over or in relation to the land¹, and to make exchanges for other land or rights over or in relation to land, with or without the payment of money for equality of exchange². Sales must be made for the best consideration in money that can reasonably be obtained³, which may be in the form of a perpetual or terminable rent⁴. Exchanges must be made for the best consideration in land or in land and money that can reasonably be obtained⁵.

1 See the Settled Land Act 1925 s 38(i); and **SETTLEMENTS** vol 42 (Reissue) PARA 827.

2 See the Settled Land Act 1925 s 38(iii); and **SETTLEMENTS** vol 42 (Reissue) PARA 827.

3 See the Settled Land Act 1925 s 39(1); and **SETTLEMENTS** vol 42 (Reissue) PARA 828. However, see also s 39(5) (fully paid shares as consideration on sale to company); and **SETTLEMENTS** vol 42 (Reissue) PARA 830.

4 See the Settled Land Act 1925 s 39(2)-(4); and **SETTLEMENTS** vol 42 (Reissue) PARAS 828-829.

5 See the Settled Land Act 1925 s 40(1); and **SETTLEMENTS** vol 42 (Reissue) PARA 835.

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405. Statutory powers: leases.

The Settled Land Act powers include power to grant leases of the land, any part of it or right over or in relation to it, for any purpose for a term not exceeding 999 years in the case of a building or forestry lease, or 100 years in the case of a mining lease, or 50 years in the case of any other lease¹. The lease must be made by deed, except in the case of a term of not more than three years, and must take effect in possession within one year or in reversion after a current term with seven years or less outstanding². The best rent reasonably obtainable must be reserved, having regard to any fine taken³ and to the circumstances generally⁴, and there must be a covenant by the lessee to pay the rent and a condition of re-entry on non-payment⁵. A counterpart must be executed by the lessee and delivered to the trustees⁶.

1 See the Settled Land Act 1925 s 41; and **SETTLEMENTS** vol 42 (Reissue) PARA 837. As to mining leases generally see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 321 et seq.

2 See the Settled Land Act 1925 s 42(1)(i), (5)(ii); and **SETTLEMENTS** vol 42 (Reissue) PARA 839.

3 Any fine taken on a lease under the statutory powers is capital money: Settled Land Act 1925 s 42(4).

4 See the Settled Land Act 1925 s 42(1)(ii); and **SETTLEMENTS** vol 42 (Reissue) PARA 839.

5 See the Settled Land Act 1925 s 42(1)(iii); and **SETTLEMENTS** vol 42 (Reissue) PARA 839. In the case of a short lease in writing, there must be an agreement rather than a covenant: s 42(5)(ii).

6 See the Settled Land Act 1925 s 42(2); and **SETTLEMENTS** vol 42 (Reissue) PARA 839.

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406. Statutory powers: mortgages.

The Settled Land Act 1925 only permits the legal estate in the land to be mortgaged for specified purposes, all of which relate to the well-being of the land, either by authorised improvements or by discharging incumbrances or other liabilities¹.

1 See the Settled Land Act 1925 s 71; and **SETTLEMENTS** vol 42 (Reissue) PARAS 849-850.

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407. Statutory powers: options.

The Settled Land Act powers include power to grant options over the land, any part of it or any right over or in relation to it, at a price which must be fixed at the time of granting the option¹ and must be the best reasonably obtainable in all the circumstances², to be exercisable within an agreed number of years not exceeding ten³.

1 See the Settled Land Act 1925 s 51(1). See also **SETTLEMENTS** vol 42 (Reissue) PARA 871.

2 See the Settled Land Act 1925 s 51(3).

3 See the Settled Land Act 1925 s 51(2).

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408. Miscellaneous statutory powers.

Trustees holding land for charitable purposes may grant up to one acre of land for the purposes of the School Sites Act 1841¹. They may also, with the consent of the Charity Commission², grant up to one acre of land as a site for a literary or scientific institution³.

Where charity trustees, as landlords, are liable to pay compensation for improvements to their tenants, they are expressly empowered to grant a lease which relieves them from that liability⁴.

1 See the School Sites Act 1841 ss 2, 6; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1354.

2 As to the Charity Commission see PARAS 538-572.

3 See the Literary and Scientific Institutions Act 1854 s 6; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 948.

4 See the Landlord and Tenant Act 1927 s 14. For the circumstances in which such liability exists and the leases which may be granted see generally Pt I (ss 1-17); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 788 et seq.

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409. Disposal by local authorities.

A principal council¹, parish and community councils², and the parish trustees of a parish acting with the consent of the parish meeting³, may dispose of land held by them, including land held for charitable purposes, in any manner they wish⁴. However, this does not authorise local authorities to dispose of land in breach of any trust, covenant or agreement binding on them⁵, or to dispose of charitable land without an order of the court or the Charity Commission, where such an order is required⁶.

Capital money received by a parish or community council, or the parish trustees of a parish acting with the consent of the parish meeting in respect of a disposal of land held for charitable purposes must be applied in accordance with any directions given under the Charities Act 1993⁷.

1 As to the meaning of 'principal council' see the Local Government Act 1972 s 270(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 23.

2 As to parish and community councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 33.

3 As to parish trustees and parish meeting see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 34, 635 et seq.

4 See the Local Government Act 1972 ss 123(1), 127(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 515, 520. Unless the disposal is by way of short tenancy, consent is required if the disposal is for a consideration less than the best that could reasonably be expected: see ss 123(2), 127(2); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 515, 520.

5 See the Local Government Act 1972 s 131(1)(a); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 515.

6 See the Charities Act 1993 s 36; the Local Government Act 1972 s 131(3); PARA 395; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 515. In particular, the provisions of the Local Government Act 1972 ss 111-130 are not to be treated as statutory authority under the Charities Act 1993 s 36(9)(a) enabling charitable property to be disposed of without an order: see the Local Government Act 1972 s 131(3); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 515. As to the Charity Commission see PARAS 538-572.

7 See the Local Government Act 1972 s 127(1), (4); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 520.

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410. Compulsory purchase and tenant's right of first refusal.

Charity land is subject to compulsory purchase under statutory procedure¹, and charity trustees have express power to sell by agreement land which is subject to a compulsory purchase order². If the purchase money on a compulsory purchase is paid into court³, the acquiring authority is liable for the cost of investing the funds in court and may be ordered to pay the cost of reinvestment in land⁴. If the purchase is made by agreement, the acquiring authority may also have to bear the cost of reinvesting in land.

The collective right of first refusal given to qualifying tenants of flats to buy their landlord's interest if he proposes to dispose of it⁵ does not apply to a disposal by way of gift to a charity, nor when the flats are the functional property of a charity which is being disposed of to another

charity for functional purposes, nor where the landlord is a housing trust or a registered social landlord⁶. It does apply where flats held as investment property are to be disposed of⁷.

1 For the procedure see the Compulsory Purchase Act 1965, which largely superseded the Lands Clauses Consolidation Act 1845; and **COMPULSORY ACQUISITION OF LAND**. Under the latter Act it was held that unless the statutory procedure was followed strictly owners of land under a disability, such as charity trustees, could not be forced to sell to the acquiring authority: *Wycombe Rly Co v Donnington Hospital* (1866) 1 Ch App 268; *Bridgend Gas and Water Co v Dunraven* (1885) 31 ChD 219.

2 See the Compulsory Purchase Act 1965 ss 2, 3, Sch 1 para 2(2); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 553. This power is probably superfluous in view of the other statutory powers of sale (see PARA 404).

3 See under the Compulsory Purchase Act 1965 ss 2, 3, Sch 1 para 6(2): see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 674.

4 See the Compulsory Purchase Act 1965 s 26(2); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 666.

5 See under the Landlord and Tenant Act 1987: see generally **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1744 et seq.

6 See the Landlord and Tenant Act 1987 ss 1(4), 4(1), (2)(f), 58(1)(f), (g); and **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1744 et seq.

7 Such a sale would not need the consent of the Commission under the Charities Act 1993 s 36 because it would be a transaction for which general or special authority had been given by Act of Parliament: see s 36(9) (a); PARA 395; and *Report of the Charity Commissioners for England and Wales for 1987* (HC Paper (1987-88) no 427) App C(c).

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411. Pre-merger vesting declarations.

Provision is made in relation to pre-merger vesting declarations¹. A declaration which is made by deed by the charity trustees of the transferor² for the purposes of creating a declaration under these provisions³, is made in connection with a relevant charity merger⁴, and is to the effect that⁵ all of the transferor's property is to vest in the transferee⁶ on such date as is specified in the declaration (the 'specified date')⁷, operates on the specified date to vest the legal title to all of the transferor's property in the transferee, without the need for any further document transferring it⁸.

However this does not apply to:

- 316 (1) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock)⁹;
- 317 (2) any land held by the transferor under a lease or agreement which contains any covenant (however described) against assignment of the transferor's interest without the consent of some other person, unless that consent has been obtained before the specified date¹⁰; or
- 318 (3) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any enactment¹¹.

- 1 See the Charities Act 1993 s 75E (added by the Charities Act 2006 s 44); and the text and notes 2-11.
- 2 For these purposes any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of the Charities Act 1993 s 75C (see PARA 319) and any reference to all of the transferor's property, where the transferor is a charity within s 75C(5), is a reference to all of the transferor's unrestricted property (within the meaning of that provision): Charities Act 1993 s 75E(6) (as added: see note 1).
- 3 le for the purposes of the Charities Act 1993 s 75E.
- 4 As to the meaning of 'relevant charity merger' see the Charities Act 1993 s 75C; and PARA 319 (definition applied by s75E(5) (as added: see note 1)).
- 5 This is subject to the Charities Act 1993 s 75E(3), (4).
- 6 For these purposes any reference to the transferee, in relation to a relevant charity merger, is a reference to the transferee (within the meaning of the Charities Act 1993 s 75C: see PARA 319), if it is a company or other body corporate, and otherwise, to the charity trustees of the transferee (within the meaning of s 75C): s 75E(7) (as added: see note 1).
- 7 Charities Act 1993 s 75E(1) (as added: see note 1).
- 8 Charities Act 1993 s 75E(2) (as added: see note 1). This is subject to s 75E(3), (4). In its application to registered land s 75E(2) has effect subject to the Land Registration Act 2002 s 27 (dispositions required to be registered: see **LAND REGISTRATION**): Charities Act 1993 s 75E(4) (as so added). As to the meaning of 'registered land' see the Land Registration Act 2002; and **LAND REGISTRATION**.
- 9 Charities Act 1993 s 75E(3)(a) (as added: see note 1).
- 10 Charities Act 1993 s 75E(3)(b) (as added: see note 1).
- 11 Charities Act 1993 s 75E(3)(c) (as added: see note 1).

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(ii) Investment

412. Powers of investment.

The powers and duties of charity trustees in regard to the investment of funds belonging to the charity are, like those of private trustees in relation to private trusts, governed by any special provisions of the trust instrument extending or limiting their statutory powers. The investment clause contained in the trust instrument may, for example, be so drawn as not to permit investment in some securities authorised by law for the investment of trust funds¹. On the other hand, if the trust instrument directs and requires trustees to make some specified investment, they are under a duty to do so even it is one of which they disapprove². Subject to any express directions contained in that instrument³, and to any conditions prescribed by it, the trustees may invest⁴ the money in any manner authorised by it, provided that in making the selection they use proper care and caution, and avoid investments which are accompanied by risk⁵.

Charity trustees should not allow their own personal opinions or moral judgements to affect their investment decisions⁶. If they consider that the charitable purposes for which the funds are held require that certain types of investment should be avoided or that an ethical investment policy is in the interests of the charity they may adopt such a policy but only in so far as this is compatible with obtaining the best possible financial return on capital⁷.

1 See eg *Re Warren, Public Trustee v Fletcher* [1939] Ch 684, [1939] 2 All ER 599; *Re Rider's Will Trusts, Nelson v Rider* [1958] 3 All ER 135, [1958] 1 WLR 974.

2 *Beauclerk v Ashburnham* (1845) 8 Beav 322; *Cadogan v Earl of Essex* (1854) 2 Drew 227; *Re Hurst, Addison v Topp* (1890) 63 LT 665 (all private trust cases).

As to the powers of investment under the Trustee Investments Act 1961 (repealed, except in so far as it is applied by another enactment) see PARA 416; and **TRUSTS** vol 48 (2007 Reissue) PARA 1017 et seq. As to the statutory powers of investment under the Trustee Act 2000 see PARAS 413-415; and **TRUSTS** vol 48 (2007 Reissue) PARA 1012 et seq.

3 *Beauclerk v Ashburnham* (1845) 8 Beav 322; *Cadogan v Earl of Essex* (1854) 2 Drew 227.

4 To 'invest' prima facie means to apply money in the purchase of some property from which interest or profit is expected and which property is purchased in order to be held for the sake of the income it will yield: *Re Wragg, Wragg v Palmer* [1919] 2 Ch 58 at 65 per Lawrence J; *Moss's Trustees v King* 1952 SC 523 at 527 per Lord President Cooper. The purchase of freehold land for some purpose other than the receipt of income is not an investment: *Re Power, Public Trustee v Hastings* [1947] Ch 572, [1947] 2 All ER 282. As to the mode of investment see **TRUSTS** vol 48 (2007 Reissue) PARA 1007.

5 *Re Whiteley, Whiteley v Learoyd* (1886) 33 Ch D 347 at 353, CA, per Cotton LJ; affd sub nom *Learoyd v Whiteley* (1887) 12 App Cas 727 at 733, HL, per Lord Watson. As to consent and discretion in relation to investment see **TRUSTS** vol 48 (2007 Reissue) PARA 1031.

6 *Cowan v Scargill* [1985] Ch 270 at 287-288, [1984] 2 All ER 750 per Megarry V-C.

7 *Harries v Church Comrs for England* [1993] 2 All ER 300, [1992] 1 WLR 1241.

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413. Statutory general power of investment.

The powers to make specified authorised investments given to trustees under the Trustee Investment Act 1961 have been largely repealed¹. Under the Trustee Act 2000, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust². This statutory power is called the 'general power of investment'³. The general power of investment does not permit a trustee to make investments in land other than in loans secured on land⁴. A person invests in a loan secured on land if he has rights under any contract under which one person provides another with credit⁵ and the obligation of the borrower to repay is secured on land⁶. An investment for these purposes does not include an asset from which no profit or income is expected⁷.

1 See PARA 416. As to the powers of investment under the Trustee Investments Act 1961 see PARA 416 et seq; and **TRUSTS** vol 48 (2007 Reissue) PARA 1017 et seq.

2 See the Trustee Act 2000 s 3(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 1012. As to statutory powers of investment under the Trustee Act 2000 see further **TRUSTS** vol 48 (2007 Reissue) PARA 1012 et seq. Part II (ss 3-7), Pt III (ss 8-10) and Pt IV (ss 11-27) do not apply to (1) trustees of authorised unit trusts (s 37(1)); (2) trustees managing a fund under a common investment scheme made, or having effect as if made, under the Charities Act 1993 s 24 (see PARA 419), other than such a fund the trusts of which provide that property is not to be transferred to the fund except by or on behalf of a charity the trustees of which are the trustees appointed to manage the fund (Trustee Act 2000 s 38(a)); or (3) trustees managing a fund under a common deposit scheme made, or having effect as if made, under s 25 (see PARA 420) (s 38(b)): see **TRUSTS** vol 48 (2007 Reissue) PARA 1012.

3 See the Trustee Act 2000 s 3(2); and **TRUSTS** vol 48 (2007 Reissue) PARA 1012.

4 See the Trustee Act 2000 s 3(3); and **TRUSTS** vol 48 (2007 Reissue) PARA 1012. As to the power to acquire freehold and leasehold land see s 8; and **TRUSTS** vol 48 (2007 Reissue) PARA 1034.

5 'Credit' includes any cash loan or other financial accommodation: Trustee Act 2000 s 3(5). 'Cash' includes money in any form: s 3(6).

6 See the Trustee Act 2000 s 3(4); and **TRUSTS** vol 48 (2007 Reissue) PARA 1012.

7 See the cases cited in PARA 412 note 4.

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414. Application of the general power of investment.

The general power of investment is in addition to powers conferred on trustees otherwise than by the Trustee Act 2000, but is subject to any restriction or exclusion imposed by the trust instrument or by any enactment or any provision of subordinate legislation¹.

The provisions relating to the general power of investment introduced by the Trustee Act 2000² apply in relation to trusts whether created before or after its commencement on 1 February 2001³. However, no provision relating to the powers of a trustee contained in an instrument made before 3 August 1961⁴ is to be treated as restricting or excluding⁵ the general power of investment⁶. A provision contained in a trust instrument made before 1 February 2001⁷ which has effect under the Trustee Investment Act 1961⁸ as a power to invest under that Act or confers power to invest under that Act is to be treated as conferring the general power of investment on a trustee⁹.

Common investment funds for charities and common deposit funds¹⁰ for charities fall outside the provisions dealing with the statutory general power of investment¹¹.

1 See the Trustee Act 2000 s 6(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 1012. For these purposes, an enactment or a provision of subordinate legislation is not to be regarded as being, or as being part of, a trust instrument: s 6(2). As to the meaning of 'subordinate legislation' see s 6(3); and **TRUSTS** vol 48 (2007 Reissue) PARA 903.

2 Ie by the Trustee Act 2000 Pt II (ss 3-7): see **TRUSTS** vol 48 (2007 Reissue) PARA 1012 et seq.

- 3 See the Trustee Act 2000 s 7(1); Trustee Act 2000 (Commencement) Order 2001, SI 2001/49, art 2; and **TRUSTS** vol 48 (2007 Reissue) PARA 1012.
- 4 le the date of the commencement of the Trustee Investment Act 1961.
- 5 le under the Trustee Act 2000 s 6(1)(b): see **TRUSTS** vol 48 (2007 Reissue) PARA 1012.
- 6 See Trustee Act 2000 s 7(2); and **TRUSTS** vol 48 (2007 Reissue) PARA 1012.
- 7 le the commencement of the Trustee Act 2000 Pt II: see note 4.
- 8 le under the Trustee Investments Act 1961 s 3(2): see PARA 416; and **TRUSTS** vol 48 (2007 Reissue) PARA 1012.
- 9 See the Trustee Act 2000 s 7(3); and **TRUSTS** vol 48 (2007 Reissue) PARA 1012.
- 10 le under the Charities Act 1993 ss 24, 25: see PARAS 419-420.
- 11 See the Trustee Act 2000 s 38; PARA 413 note 2; and **TRUSTS** vol 48 (2007 Reissue) PARA 1012.

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415. Exercising skill and care in investment.

When exercising the general power of investment or any other power of investment, however conferred, and when carrying out duties relating to the exercise of a power of investment or to the review of investments¹, trustees are under a duty to exercise such skill and care as is reasonable in the circumstances².

Further, in exercising any power of investment, a trustee must have regard to the standard investment criteria³. The standard investment criteria, in relation to a trust, are:

- 319 (1) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind⁴; and
- 320 (2) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust⁵.

Before exercising any power of investment, the trustee must, unless the exception applies⁶, seek proper advice⁷ about the way in which, having regard to the standard investment criteria, the powers ought to be exercised⁸.

A trustee must from time to time review the investments of the trust and consider whether, having regard to the standard investment criteria, they ought to be varied⁹. When reviewing the investments of the trust, a trustee must, unless the exception applies¹⁰, obtain and consider proper advice about whether, having regard to the standard investment criteria, the investments ought to be varied¹¹.

- 1 le under the Trustee Act 2000 ss 4, 5: see **TRUSTS** vol 48 (2007 Reissue) PARAS 1013-1014.
- 2 See the Trustee Act 2000 s 1, Sch 1; and **TRUSTS** vol 48 (2007 Reissue) PARAS 949-950.
- 3 See the Trustee Act 2000 s 4(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 1013.

- 4 See the Trustee Act 2000 s 4(3)(a); and **TRUSTS** vol 48 (2007 Reissue) PARA 1013.
- 5 See the Trustee Act 2000 s 4(3)(b); and **TRUSTS** vol 48 (2007 Reissue) PARA 1013.
- 6 The exception is that a trustee need not obtain such advice if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so: Trustee Act 2000 s 5(3).
- 7 As to proper advice for the purposes of the Trustee Act 2000 s 5 see s 5(4); and **TRUSTS** vol 48 (2007 Reissue) PARA 1014.
- 8 See the Trustee Act 2000 s 5(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 1014.
- 9 See the Trustee Act 2000 s 4(2); and **TRUSTS** vol 48 (2007 Reissue) PARA 1013.
- 10 See note 6.
- 11 See the Trustee Act 2000 s 5(2); and **TRUSTS** vol 48 (2007 Reissue) PARA 1014.

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416. General investment powers under the Trustee Investment Act 1961.

The powers to make specified authorised investments given to trustees under the Trustee Investment Act 1961 have been largely repealed¹, but certain provisions still have effect either in so far as they are applied by or under any other enactment or in so far as they relate to a trustee having a power of investment conferred on him under an enactment passed before 3 August 1961² and which has not been amended³ by the Trustee Act 2000⁴.

Trustees of charitable trusts have the same powers of investment as private trustees. Except in so far as they may be limited by any statutory provision, whenever made, or by express provision in any other instrument made after 3 August 1961⁵, their powers and duties are laid down and regulated by the Trustee Investment Act 1961, but those statutory powers are in addition to any other power of investment given to the trustees⁶.

Where property is held by trustees as an investment, the trustees should normally seek to obtain therefrom the maximum return, whether by way of income or capital growth, which is consistent with commercial prudence. In most case the best interests of the charity require that the trustees' choice of investments should be made solely on the basis of well-established investment criteria, including the need for diversification⁷. Exceptionally, if trustees are satisfied that investing in a company engaged in a particular type of business would conflict with the very objects their charity is seeking to achieve, they should not so invest⁸. Another exceptional case might be where trustees' holdings of particular investments might hamper a charity's work either by making potential recipients of aid unwilling to be helped because of the source of the charity's money, or by alienating some of those who support the charity financially. If the trust deed so provides, trustees would be entitled, or even required, to take into account non-financial criteria⁹.

1 Ie by the Trustee Act 2000 s 40(1), (3), Sch 2 Pt I para 1, Sch 4 Pt I. As to powers of investment under the Trustee Investments Act 1961 see further **TRUSTS** vol 48 (2007 Reissue) PARA 1017 et seq. As to the statutory powers of investment under the Trustee Act 2000 see PARAS 413-415; and **TRUSTS** vol 48 (2007 Reissue) PARA 1012 et seq.

2 Ie the date on which the Trustee Investment Act 1961 was passed.

3 Ie by the Trustee Act 2000 Sch 2.

4 See the Trustee Act 2000 Sch 2 Pt I para 1(1), (2). The Trustee Investments Act 1961 ss 1, 2, 5, 6, 12, 13 and 15 cease to have effect, except in so far as they are applied by or under any other enactment: Trustee Act 2000 Sch 2 Pt I para 1(1). The Trustee Investments Act 1961 s 3 and Schs 2, 3 cease to have effect, except in so far as they relate to a trustee having a power of investment conferred on him under an enactment which was passed before the passing of the Trustee Investment Act 1961, and which is not amended by the Trustee Act 2000 Sch 2: Sch 2 Pt I para 1(2). As to the Trustee Investments Act 1961 see **TRUSTS** vol 48 (2007 Reissue) PARA 1017 et seq.

5 See the Trustee Investments Act 1961 s 1; and **TRUSTS** vol 48 (2007 Reissue) PARA 1018 et seq.

6 See the Trustee Investments Act 1961 s 3; and **TRUSTS** vol 48 (2007 Reissue) PARA 1018 et seq. Guidance was given by the Charity Commissioners (now the Charity Commission) in the *Report of the Charity Commissioners for England and Wales for 1978* (HC Paper (1979-80) no 94) App G, and the *Report of the Charity Commissioners for England and Wales for 1985* (HC Paper (1985-86) no 391) paras 65-70.

The court has jurisdiction to widen the powers of investment of charitable trustees either by way of an administrative scheme (*Re Royal Society's Charitable Trusts* [1956] Ch 87, [1955] 3 All ER 14; *Re Royal Naval and Royal Marine Children's Homes, Portsmouth, Lloyds Bank Ltd v A-G* [1959] 2 All ER 716n, [1959] 1 WLR 755) or under the Trustee Act 1925 (see the Trustee Act 1925 s 57; *Re Shipwrecked Fishermen and Mariners' Royal Benevolent Society* [1959] Ch 220, [1958] 3 All ER 465; *Mason v Farbrother* [1983] 2 All ER 1078; and **TRUSTS** vol 48 (2007 Reissue) PARA 1061). Initially, the view of the courts was that the powers of investment given by the Trustee Investments Act 1961 should be taken to be prima facie sufficient, though there was power to act if a very special case was made out: *Re London University's Charitable Trusts* [1964] Ch 282, [1963] 3 All ER 859 (applying non-charity trust cases such as *Re Kolb's Will Trusts, Lloyds Bank Ltd v Ullman* [1962] Ch 531, [1961] 3 All ER 811; compromised on appeal 106 Sol Jo 669, CA); *Re Cooper's Settlement, Cooper v Cooper* [1962] Ch 826, [1961] 3 All ER 636. Subsequently it has been held that this principle is no longer applicable: *Trustees of the British Museum v A-G* [1984] 1 All ER 337, [1984] 1 WLR 418. Before the Charities Act 1960 the jurisdiction was sometimes used to permit the funds of several charitable trusts to be consolidated and managed together: *Re Royal Society's Charitable Trusts* [1956] Ch 87, [1955] 3 All ER 14.

7 Expert advice should be taken where appropriate. Due regard should be taken of the need to balance income against capital growth and the need to balance risk against return: *Harries v Church Comrs for England* [1993] 2 All ER 300, [1992] 1 WLR 1241. Note also the observations of Lord Templeman in *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1, [1991] 1 All ER 545, HL.

8 Eg cancer research charities investing in tobacco shares. It is very unlikely that this would disable the trustees from choosing a properly diversified portfolio.

9 *Harries v Church Comrs for England* [1993] 2 All ER 300, [1992] 1 WLR 1241. See also *Cowan v Scargill* [1985] Ch 270, [1984] 2 All ER 750 (a non-charity case).

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417. Deposits in trustee savings banks.

Under the Trustee Savings Bank Act 1981¹ the treasurer of any charitable or provident institution or society, or charitable donation or bequest for the maintenance, education, or benefit of the poor, could, subject to the statutory provisions restricting the amount of deposits, invest the trust funds in the funds of a trustee savings bank. The receipt of the treasurer, trustee, or other officer of the charitable or provident institution or society apparently authorised to require payment discharged the savings bank². These provisions were repealed by the Trustee Savings Bank Act 1985³, which reorganised trustee savings banks into companies incorporated under the Companies Acts, with savings in relation to funds already invested in the funds of a trustee savings bank and in relation to receipts⁴.

¹ Trustee Savings Banks Act 1981 s 29(1), consolidating earlier legislation (now repealed: see the text and notes 3-4).

² Trustee Savings Bank Act 1981 s 29(2) (repealed).

3 See the Trustee Savings Banks Act 1985 s 7(3), Sch 4.

4 See the Trustee Savings Banks Act 1985 ss 4(3), (5), 7(3), Sch 4; Trustee Savings Banks Act 1985 (Appointed Day) (No 4) Order 1986, SI 1986/1223, arts 2(a), 8, 9, 12, Sch 1. See further **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 809.

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418. Investment in land.

The Trustee Investments Act 1961 did not itself permit investment in land¹. In the absence of an express power, the purchase of land may be authorised out of capital money arising on the sale of settled land², or it may be specially authorised by the Charity Commission³.

However, under the Trustee Act 2000, trustees may acquire freehold or leasehold land as an investment, for occupation by a beneficiary or for any other reason⁴.

1 It did permit investment in certain mortgages: see the Trustee Investments Act 1961 s 1, Sch 1 Pt II para 13; and **TRUSTS** vol 48 (2007 Reissue) PARA 1023. Section 1 was repealed, with savings, by the Trustee Act 2000: see PARA 416. As to the Trustee Investments Act 1961 see PARA 416; and **TRUSTS** vol 48 (2007 Reissue) PARA 1017 et seq.

2 See the Settled Land Act 1925 s 73(1)(x); and **SETTLEMENTS** vol 42 (Reissue) PARA 808.

3 See under the Charities Act 1993 s 26: see PARA 385. See the *Report of the Charity Commissioners for England and Wales for 1988* (HC Paper (1988-89) no 319) paras 73-75. As to the Charity Commission see PARAS 538-572.

4 See the Trustee Act 2000 ss 8-10; and **TRUSTS** vol 48 (2007 Reissue) PARA 1034.

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419. Schemes to establish common investment funds.

Under the Charities Act 1993, the court¹ and the Charity Commission² may by order³ make and bring into effect schemes ('common investment schemes') to establish common investment funds providing⁴: (1) for property transferred to the fund by or on behalf of a charity⁵ participating in the scheme to be invested under the control of the trustees managing the fund⁶; and (2) for the participating charities to be entitled, subject to the provisions of the scheme, to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfer⁷.

Common investment schemes may be made on the application of any two or more charities⁸. Every charity has power to participate in common investment schemes as part of its investment powers, unless that power is excluded specifically by the trusts⁹ of the charity¹⁰. Unless the scheme provides otherwise, the rights of a participating charity may not be assigned or charged¹¹.

Common investment schemes may be made in terms admitting any charity to participate, or may restrict the right to participate in any manner¹².

A common investment fund is deemed for all purposes to be a charity; and, until a day to be appointed, if the scheme only admits exempt charities¹³ the fund is treated as an exempt charity¹⁴.

A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund, and may in particular include provision¹⁵:

- 321 (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he is also a charity trustee¹⁶ of or trustee for a participating charity¹⁷;
- 322 (b) for restricting the size of the fund, and for regulating as to time, amount or otherwise the right to transfer property to or withdraw it from the fund, and for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity¹⁸;
- 323 (c) for enabling income to be withheld from distribution with a view to avoiding fluctuations in the amounts distributed, and generally for regulating distributions of income¹⁹;
- 324 (d) for enabling money to be borrowed temporarily for the purpose of meeting payments to be made out of the funds²⁰;
- 325 (e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner²¹;
- 326 (f) for regulating the accounts and information to be supplied to participating charities²².

An application for the review of a decision of the Commission not to make a common investment scheme lies to the Tribunal²³ at the instance of the Attorney General, the charity trustees of a charity which applied to the Commission for the scheme, the charity itself (if a body corporate) and any other person who is or may be affected by the decision²⁴. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission²⁵.

1 As to the meaning of 'court' see PARA 175 note 12.

2 As to the Charity Commission see PARAS 538-572.

3 By order of the Commissioners dated 4 December 1962 a scheme was made establishing the Charities Official Investment Fund. The original scheme is printed in full in the *Report of the Charity Commissioners for England and Wales for 1962* (HC Paper (1963-64) no 17) pp 34-49, App B, and in Tudor on Charities (6th Edn, 1967) pp 721-735. It has been amended subsequently. As to the unification of trusts by specified universities and colleges under the Universities and Colleges (Trusts) Act 1943 see **EDUCATION** vol 15(2) (2006 Reissue) PARA 665; and *Re Freeston's Charity, Sylvester v Master and Fellows of University College, Oxford* [1979] 1 All ER 51, [1978] 1 WLR 741, CA.

4 Charities Act 1993 s 24(1) (amended by the Charities Act 2006 Sch 8 para 116).

5 As to the meaning of 'charity' see PARA 1.

6 Charities Act 1993 s 24(1)(a). As to the disapplication of the Trustee Act 2000 in relation to common investment schemes see PARA 413 note 2.

7 Charities Act 1993 s 24(1)(b).

8 Charities Act 1993 s 24(2) (amended by the Charities Act 2006 Sch 8 para 116). This means on the application of the trustees of two or more charitable trusts; the trustees may be the same: *Re London University's Charitable Trusts* [1964] Ch 282, [1963] 3 All ER 859 (decided under previous legislation).

9 As to the meaning of 'trusts' see PARA 217 note 5.

10 Charities Act 1993 s 24(7).

11 Charities Act 1993 s 24(6). Trustees and persons concerned in the management of the fund are not required or entitled to take account of any trust or equity affecting participating charities or its property or rights: s 24(6).

12 Charities Act 1993 s 24(3). A common investment scheme may also provide for Scottish recognised bodies or Northern Ireland charities to be admitted to participate in the scheme, in addition to the participating charities, to such extent as the trustees appointed to manage the fund may determine: see ss 24(3A), (3B), 25A (added by the Charities Act 2006 s 23(1), (4)).

13 As to exempt charities see PARAS 315-317.

14 Charities Act 1993 s 24(8) (prospectively amended by the Charities Act 2006 ss 11(10), 75(2), Sch 9 para 1). The Charities Act 1993 s 24(8) applies not only to the common investment funds established under the powers of s 24 but also to similar funds established under statutory powers for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charities: s 24(9).

15 Charities Act 1993 s 24(4). A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity is entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity is entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme: s 24(5). Where a scheme makes any such provision it must also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making of deposits) as are from time to time reasonably required in respect of the liabilities of the fund for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve: s 24(5).

16 As to the meaning of 'charity trustees' see PARA 1 note 10.

17 Charities Act 1993 s 24(4)(a).

18 Charities Act 1993 s 24(4)(b).

19 Charities Act 1993 s 24(4)(c).

20 Charities Act 1993 s 24(4)(d).

21 Charities Act 1993 s 24(4)(e).

22 Charities Act 1993 s 24(4)(f).

23 As to the Tribunal see PARA 573 et seq.

24 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

25 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 24).

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420. Schemes to establish common deposit funds.

The court¹ or the Charity Commission² may by order make and bring into effect schemes ('common deposit schemes') for the establishment of common deposit funds under trusts which provide³: (1) for sums to be deposited by or on behalf of a charity⁴ participating in the scheme and invested under the control of trustees appointed to manage the fund⁵; and (2) for any such charity to be entitled to repayment of any sums so deposited and to interest thereon at a rate determined under the scheme⁶.

Common deposit schemes may be made on the application of any two or more charities⁷. Every charity has power to participate in common deposit schemes as part of its investment powers, unless that power is excluded specifically by the trusts⁸ of the charity⁹. Unless the scheme provides otherwise, the rights of a participating charity may not be assigned or charged¹⁰.

Common deposit schemes may be made in terms admitting any charity to participate, or may restrict the right to participate in any manner¹¹. A common deposit fund is deemed for all purposes to be a charity; and, until a day to be appointed, if the scheme only admits exempt charities¹² the fund is treated as an exempt charity¹³.

A common deposit scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common deposit fund, and may in particular include provision¹⁴:

- 327 (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he is also a charity trustee¹⁵ of or trustee for a participating charity¹⁶;
- 328 (b) for regulating as to time, amount or otherwise the right to repayment of sums deposited in the fund¹⁷;
- 329 (c) for authorising a part of the income for any year to be credited to a reserve account maintained for the purpose of counteracting any losses accruing to the fund, and generally for regulating the manner in which the rate of interest on deposits is to be determined from time to time¹⁸;
- 330 (d) for enabling money to be borrowed temporarily for the purpose of meeting payments to be made out of the funds¹⁹;
- 331 (e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner²⁰;
- 332 (f) for regulating the accounts and information to be supplied to participating charities²¹.

An application for the review of a decision of the Commission not to make a common deposit scheme lies to the Tribunal²² at the instance of the Attorney General, the charity trustees of a charity which applied to the Commission for the scheme, the charity itself (if a body corporate) and any other person who is or may be affected by the decision²³. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission²⁴.

1 As to the meaning of 'court' see PARA 175 note 12.

2 As to the Charity Commission see PARAS 538-572.

3 Charities Act 1993 s 25(1) (amended by the Charities Act 2006 Sch 8 para 117).

4 As to the meaning of 'charity' see PARA 1.

5 Charities Act 1993 s 25(1)(a). As to the disapplication of the Trustee Act 2000 in relation to common deposit schemes see PARA 413 note 2.

- 6 Charities Act 1993 s 25(1)(b).
- 7 Charities Act 1993 ss 24(2), 25(2) (s 24(2) amended by the Charities Act 2006 Sch 8 para 116; the Charities Act 1993 s 25(2) amended by the Charities Act 2006 s 23(2)).
- 8 As to the meaning of 'trusts' see PARA 217 note 5.
- 9 Charities Act 1993 ss 24(7), 25(2) (as amended: see note 7).
- 10 Charities Act 1993 ss 24(6), 25(2) (as amended: see note 7). Trustees and persons concerned in the management of the fund are not required or entitled to take account of any trust or equity affecting participating charities or its property or rights: ss 24(6), 25(2).
- 11 Charities Act 1993 ss 24(3), 25(2) (as amended: see note 7). They may also provide for Scottish recognised bodies or Northern Ireland charities to be admitted to participate in the scheme, in addition to the participating charities, to such extent as the trustees appointed to manage the fund may determine: see ss 25(4), (5) (added by the Charities Act 2006 s 23(3)).
- 12 As to exempt charities see PARA 315.
- 13 Charities Act 1993 ss 24(8), 25(2) (s 25(2) as amended (see note 7); s 24(8) prospectively amended by the Charities Act 2006 s 11(10)). This applies not only to the common deposit funds, but also to similar funds established under statutory powers for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charities: Charities Act 1993 ss 24(9), 25(2) (s 25(2) as so amended).
- 14 Charities Act 1993 ss 24(4), 25(2) (s 25(2) as amended: see note 7).
- 15 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 16 Charities Act 1993 ss 24(4)(a), 25(2) (s 25(2) as amended: see note 7).
- 17 Charities Act 1993 ss 24(4)(b), 25(2), (3) (s 25(2) as amended: see note 7).
- 18 Charities Act 1993 ss 24(4)(c), 25(2), (3) (s 25(2) as amended: see note 7).
- 19 Charities Act 1993 ss 24(4)(d), 25(2) (s 25(2) as amended: see note 7).
- 20 Charities Act 1993 ss 24(4)(e), 25(2) (s 25(2) as amended: see note 7).
- 21 Charities Act 1993 ss 24(4)(f), 25(2) (s 25(2) as amended: see note 7).
- 22 As to the Tribunal see PARA 573 et seq.
- 23 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 24 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 23).

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(iii) Ex Gratia Payments

421. Circumstances in which payments may be made.

Notwithstanding the rule that trust property may only be applied in accordance with the terms of the trust¹, there are cases in which trustees of property for charitable purposes may be authorised to make payments out of the trust property to persons with a moral but no legal claim to the property².

Just as trustees have power to compromise claims³ and the court, acting on the advice of the Attorney General, may relieve charity trustees from the obligation to make good in full breaches of trust for which they are answerable⁴, so, where by mistake or owing to some legal technicality a charity has received more than was apparently intended⁵, the charity or the trustees may apply for authority to pay out some part of the fund to the persons who have a moral claim to it⁶. The charity or the trustees will not necessarily be authorised to pay out as much as they wish⁷.

1 See PARA 329.

2 *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700, [1969] 3 All ER 208; but not where doing so would contravene an Act of Parliament: *A-G v Trustees of the British Museum (Commission for Looted Art in Europe intervening)* [2005] EWHC 1089, [2005] Ch 397, [2005] 3 WLR 396.

3 See the Trustee Act 1925 s 15(f); and **TRUSTS** vol 48 (2007 Reissue) PARA 1052. For further protection, they may apply to the court to sanction the compromise. The court will take into account the moral merits of the claim in question: see *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700 at 709, [1969] 3 All ER 208 at 213 per Cross J.

4 See *A-G v Brettingham* (1840) 3 Beav 91 at 95 per Lord Langdale MR; *A-G v Exeter Corp'n* (1827) 2 Russ 362; *A-G v Pretymen* (1841) 4 Beav 462; *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700 at 710, [1969] 3 All ER 208 at 213 per Cross J.

5 There might be other circumstances, as where a testator had broken a solemn but unenforceable promise to give the property to an individual: see eg *National Provincial Bank Ltd v Moore* (1967) 111 Sol Jo 357. As to this type of case see *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700 at 710, [1969] 3 All ER 208 at 214 per Cross J.

6 *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700, [1969] 3 All ER 208. The trustees cannot be made to apply.

7 See the order made in *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700, [1969] 3 All ER 208.

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422. Procedure prior to the Charities Act 1992.

The procedure prior to the Charities Act 1992 was that if the property was that of a specific charity, application would be made in the first instance to the Charity Commissioners (now the Charity Commission)¹; if it was held on trust for charitable purposes generally the application would first be made to the Treasury Solicitor². After an investigation into the facts a report might be made to the Attorney General, who might decide himself or might apply ex parte to the court for guidance³. This procedure has not been abolished, but it is thought that application will now normally be made under the statutory provisions introduced by the Charities Act 1992 and re-enacted in the Charities Act 1993⁴.

1 As to the Charity Commissioners see PARA 538.

2 As to the Treasury Solicitor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 541.

3 This procedure was indicated as appropriate in *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700 at 711, [1969] 3 All ER 208 at 214 per Cross J. It has been followed since, though it may be modified in the light of experience. Reference may be made to the annual reports of the Charity Commissioners (eg *Report of the Charity Commissioners for England and Wales for 1970* (HC Paper (1970-71) no 409) p 30 and

the *Report of the Charity Commissioners for England and Wales for 1976* (HC Paper (1976-77) no 389) paras 113-116 which contain an example of an ex gratia payment authorised by the Attorney General on a proposal by the Commissioners) for guidance on this matter.

4 See the Charities Act 1993 s 27 (see PARA 423), which re-enacts the Charities Act 1960 s 23A (added by the Charities Act 1992 s 17; but now repealed).

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423. Power of Charity Commission to authorise ex gratia payments.

The Charity Commission¹ may by order² exercise the same power as is exercisable by the Attorney General to authorise charity trustees³ to make any application of property of the charity, or to waive to any extent, on behalf of the charity, its entitlement to receive any property⁴. This may be done where the charity trustees otherwise have no power to do so, but in all the circumstances regard themselves as under a moral obligation to do so⁵.

The power is exercisable under the supervision of, and in accordance with any directions given by, the Attorney General, which may, in particular, require the Commission, in such circumstances as are specified in the directions, to refrain from exercising the power, or to consult the Attorney General before exercising it⁶. Where an application is made to the Commission for it to exercise that power in a case where it is not precluded from doing so by any such directions, but it considers that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by them, the Commission may refer the application to the Attorney General⁷. Where, in the case of any such application, the Commission determines the application by refusing to authorise charity trustees to take any action under these provisions⁸, that refusal does not preclude the Attorney General, on an application subsequently made to him by the trustees, from authorising the trustees to take that action⁹.

1 As to the Charity Commission see PARAS 538-572.

2 As to the making of orders generally see the Charities Act 1993 s 86; and PARA 584.

3 As to the meaning of 'charity trustees' see PARA 1 note 10.

4 Charities Act 1993 s 27(1) (amended by the Charities Act 2006 Sch 8 para 120).

5 Charities Act 1993 s 27(1).

6 Charities Act 1993 s 27(2) (amended by the Charities Act 2006 Sch 8 para 120).

7 Charities Act 1993 s 27(3) (amended by the Charities Act 2006 Sch 8 para 120).

8 I.e. under the Charities Act 1993 s 27(1): see the text and notes 4-5.

9 Charities Act 1993 s 27(4) (amended by the Charities Act 2006 Sch 8 para 120).

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(iv) Rating

A. MANDATORY RELIEF FOR CHARITIES

(A) IN GENERAL

424. Scope of relief in general.

Before new valuation lists came into force in 1956 there was a divergence between the law and practice with regard to the rating of charities. At law, it had long been established that charitable organisations were rateable in respect of the hereditaments they occupied¹, but in practice rating authorities frequently undervalued the hereditaments of charitable and kindred bodies, and by this means those bodies paid only reduced or nominal rates. When rating authorities² ceased to be responsible for preparing and amending valuation lists³ this divergence of law and practice was ended, and in the valuation lists which came into force in 1956 the valuation officers of the Inland Revenue Commissioners⁴ assessed such hereditaments at their full value⁵.

The Local Government Finance Act 1988, which repealed the General Rate Act 1967, abolished domestic rates and replaced them with a system of community charges⁶. So far as non-domestic rates were concerned a new form of rating was set up, though it is broadly similar to the system it replaced.

Under the Local Government Finance Act 1988, ratepayers that are charities⁷ or trustees for a charity qualify for a reduction by 80 per cent of the amount the ratepayer would otherwise have to pay⁸ for any occupied hereditament⁹ where (1) the ratepayer is a charity or trustees for a charity; and (2) the hereditament is wholly or mainly used for charitable purposes¹⁰ (whether of that charity or of that and other charities)¹¹. Previously a similar relief applied to any unoccupied hereditament where (a) the ratepayer is a charity or trustees for a charity; and (b) it appears that when next in use the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities)¹²; however, such unoccupied hereditaments are now zero-rated and thus no rates are payable¹³. Certain hereditaments, namely places of religious worship and property used for the disabled, are wholly exempt from non-domestic rating¹⁴.

1 *Mersey Docks v Cameron, Jones v Mersey Docks* (1865) 11 HL Cas 443; *London Corpn v Stratton* (1875) LR 7 HL 477.

2 Rating authorities have been replaced by billing authorities. As to billing authorities see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 5. As to the meaning of 'hereditament' see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 33 et seq.

3 *Id* by virtue of the Local Government Act 1948 s 33 (repealed). As to valuation lists see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 118 et seq.

4 The Inland Revenue Commissioners have been replaced by the Commissioners for Revenue and Customs: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. As to the functions of the valuation officers of the Commissioners for Revenue and Customs see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 6.

5 As to the history of the rating legislation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

6 Domestic rates were abolished by the Local Government Finance Act 1988 and replaced by the community charge, itself replaced by the council tax in 1993: see the Local Government Finance Act 1992; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2; **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

7 As to the meaning of 'charity' see PARA 426 note 2.

8 See the Local Government Finance Act 1988 s 43(5), (6)(a); and PARA 426.

9 As to the meaning of 'hereditament' see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 33 et seq. As to rateable occupation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 12 et seq. As to occupation by a charity see PARA 427.

10 As to the meaning of 'wholly or mainly used for charitable purposes' see PARA 428.

11 See the Local Government Finance Act 1988 s 43(5), (6)(a); and PARA 426.

12 See the Local Government Finance Act 1988 s 45(5), (6) (repealed).

13 Local Government Finance Act 1988 s 45A: see PARA 429.

14 See the Local Government Finance Act 1988 s 51, Sch 5 paras 11, 16; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 41-42, 52.

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425. Establishment of right to relief.

Under the General Rate Act 1967 (now repealed)¹, the right to charity rating relief could be established by resisting proceedings in the magistrates' court brought by the rating authority² for non-payment of rates³ or by proceedings in the High Court for a declaration⁴. It would seem that both procedures are still available under the Local Government Finance Act 1988.

1 As to the history of the rating legislation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

2 See eg *Meriden RDC v White* [1972] RA 530, DC; *Ealing London Borough Council v Ladyeholme Co Ltd* [1974] RA 399; *Royal Society for the Protection of Birds v Hornsea UDC* [1975] RA 26, DC.

3 Then by means of an application for a distress warrant, now by means of an application for a liability order (as to which see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 193 et seq).

4 This was done in eg *Over Seventies Housing Association v Westminster City Council* [1974] RA 247; *Oxfam v Birmingham City District Council* [1976] AC 126, [1975] 2 All ER 289, HL; *Forces Help Society and Lord Roberts Workshops v Canterbury City Council* [1979] RA 68. As to declaratory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 716 et seq.

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(B) OCCUPIED HEREDITAMENTS

426. Calculating the amount payable for hereditaments in the local rating list occupied by charities.

Where on the day concerned the ratepayer¹ is a charity² or trustees for a charity and the occupied hereditament is wholly or mainly used for charitable purposes³ (whether of that charity or of that and other charities)⁴, the chargeable amount⁵ for a chargeable day⁶ is calculated by multiplying the rateable value⁷ by the non-domestic rating multiplier⁸ for the

financial year, and dividing the product by five times the number of days in the financial year⁹. The result is a reduction by 80 per cent of the amount the ratepayer would have had to pay were he not entitled to the reduction¹⁰.

1 le the person subject to the non-domestic rate of a hereditament in a local rating list: see the Local Government Finance Act 1988 s 43(1). As to the meaning of 'hereditament' see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 33 et seq. As to the liability to the non-domestic rate for occupied hereditaments in the local non-domestic rating lists see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 60. As to rating lists see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 118 et seq.

2 For these purposes, 'charity' means an institution or other organisation established for charitable purposes only or any persons administering a trust established for charitable purposes only: Local Government Finance Act 1988 s 67(10). For the general definition of a charity see PARA 1. Registration under the charities legislation is conclusive that the organisation is a charity for the purposes of the relief from rates: see eg *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52, ChD; *Finch v Poplar Borough Council* (1967) 66 LGR 324, [1968] RA 208, ChD; *Meriden RDC v White* [1972] RA 530, 17 RRC 187.

The cases cited in this paragraph which were decided prior to the coming into force of the Local Government Finance Act 1988 must now be considered in relation to the non-domestic rating provisions in Pt III (ss 41-67) (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 3 et seq). As to the history of the rating legislation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

3 Local Government Finance Act 1988 s 43(5), (6)(a) (substituted by the Local Government Act 2003 s 64(1)). As to the meaning of 'wholly or mainly used for charitable purposes' see PARA 428. As to occupation by a charity see PARA 427.

4 See the Local Government Finance Act 1988 ss 43(6)(a), 67(7) (amended by the Rating (Empty Properties) Act 2007 Sch 1 para 5).

5 The chargeable amount for occupied property is calculated by the formula in s 43(5).

6 A 'chargeable day' is one which falls within the financial year and for which the ratepayer's name is shown in the list: Local Government Finance Act 1988 s 54(3). A 'financial year' is a period of 12 months beginning with 1 April: s 145(3).

7 The 'rateable value' is the value entered in the local non-domestic rating list: see the Local Government Finance Act 1988 s 42(4) (amended by the Local Government and Housing Act 1989 s 139, Sch 5 paras 1, 20, 79(3)); Local Government Finance Act 1988 s 44(2) (amended by the Local Government and Housing Act 1989 s 194(4), Sch 5 paras 1, 21, 79(3), Sch 12 Pt II).

8 Local Government Finance Act 1988 s 44(4) (s 44(4), (5) substituted by SI 1994/3279). Where the billing authority is a special authority, this figure is the authority's non-domestic rating multiplier for the financial year less the small hereditament factor: Local Government Finance Act 1988 s 44(5) (as so substituted). The multiplier is a uniform amount applying to every billing authority area and is fixed annually by the Secretary of State using the method set out in the Local Government Finance Act 1988 s 56(2), Sch 7: see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 86. As to billing authorities see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 5; and as to special authorities see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 60.

9 Local Government Finance Act 1988 s 44(6). The formula is set out in s 43(5).

10 As to the scope of relief in general see PARA 424.

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427. Occupation by a charity.

Charities registered under the Charities Act 1993¹ are conclusively presumed to be charities for the purposes of the rating legislation². However, a body whose application to be registered as a

charity has been rejected by the Charity Commission³ may still contend that it is a charity for the purposes of the rating legislation⁴. For rating purposes a charity occupies a house in which one of its officers or servants resides if it is essential to the performance of his duties that he should reside in it or in one close by and it is the mutual understanding that he should do so; or, even though it is not essential that he reside in the house or in one close by, if he can by doing so better perform his duties to a material degree and there is an express term in the contract that he should reside there⁵. Charities which provided flats for the dependants of deceased officers of the armed services, and for ex-servicemen, have been held to be in occupation of the flats⁶.

1 As to the registration of charities under the Charities Act 1993 see PARA 304 et seq.

2 See eg *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52, ChD; *Finch v Poplar Borough Council* (1967) 66 LGR 324, [1968] RA 208, ChD; *Meriden RDC v White* [1972] RA 530, 17 RRC 187.

The cases cited in this paragraph which were decided prior to the coming into force of the Local Government Finance Act 1988 must now be considered in relation to the non-domestic rating provisions in Pt III (ss 41-67) (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 3 et seq). As to the history of the rating legislation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

3 As to the Charity Commission see PARAS 538-572.

4 See *Over Seventies Housing Association v Westminster City Council* [1974] RA 247.

5 *Glasgow Corpn v Johnstone* [1965] AC 609, [1965] 1 All ER 730, HL (house occupied by church officer); *Northern Ireland Comr of Valuation v Fermanagh Protestant Board of Education* [1969] 3 All ER 352, [1969] 1 WLR 1708, HL (teachers' houses); *Valuation Comr v Redemptorist Order Trustees* [1972] RA 145, NI CA (monastery where members of religious order lived and from where they carried out its charitable purposes); *Royal Society for the Protection of Birds v Hornsea UDC* [1975] RA 26, DC (house for warden at bird reserve); *Welsh National Water Development Authority (formerly Taf Fechan Water Board) v Mid-Glamorgan County Council (formerly Glamorgan County Council)* [1975] RA 106, CA (caretaker living on school premises).

6 *Soldiers', Sailors' and Airmen's Families Association v Merton Corpn* [1966] 3 All ER 780, [1967] 1 WLR 127, CA; *Forces Help Society and Lord Roberts Workshops v Canterbury City Council* [1979] RA 68; and see *Ealing London Borough Council v Ladyeholme Co Ltd* [1974] RA 399.

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428. Wholly or mainly used for charitable purposes.

In deciding whether a hereditament¹ is wholly or mainly² used for charitable purposes, the use made of the hereditament by the occupier must be considered³. The use must be for purposes which directly facilitate the carrying out of the main charitable purposes of the charity⁴, and use for the purpose of raising money to further the charitable objects does not qualify for relief⁵. However, a hereditament is to be treated as wholly or mainly used for charitable purposes at any time if at the time it is wholly or mainly used for the sale of goods donated to a charity and the proceeds of sale of the goods, after any deduction of expenses, are applied for the purposes of a charity⁶.

1 As to the meaning of 'hereditament' see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 33 et seq.

2 It has been said in another context that 'mainly' probably means 'more than half': *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 669, [1960] 3 All ER 503 at 512, HL, per Lord Morton of Henryton.

3 See *Glasgow Corpn v Johnstone* [1965] AC 609, [1965] 1 All ER 730, HL, where the residence of a church officer was held to be occupied by the church authority and used for charitable purposes, because his residence there was of material assistance to the church authority in carrying out its main charitable activities.

The cases cited in this paragraph which were decided prior to the coming into force of the Local Government Finance Act 1988 must now be considered in relation to the non-domestic rating provisions in Pt III (ss 41-67) (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 3 et seq). As to the history of the rating legislation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

4 *Glasgow Corpn v Johnstone* [1965] AC 609, [1965] 1 All ER 730, HL; *Oxfam v Birmingham City District Council* [1976] AC 126, [1975] 2 All ER 289, HL. See also *Polish Historical Institution Ltd v Hove Corpn* (1963) 61 LGR 438, DC; *Aldous v Southwark Corpn* [1968] 3 All ER 498, 15 RRC 269, CA. In *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52, trustees of a holiday centre for miners in need of a change of air admitted to it persons other than beneficiaries if there was surplus accommodation at charges sufficient to cover their cost; the admission of such persons, not to raise money, but to assist in keeping the centre functioning, was held to facilitate wholly and directly the carrying out of the trustees' main purpose. See also *Meriden RDC v White* [1972] RA 530, DC (colliery sports and social club); *Royal British Legion Attendants Co (Belfast) Ltd v Valuation Comr* [1979] NI 138, NI Lands Tribunal (employment of ex-servicemen as car park attendants); *MacConnell v Northern Ireland Valuation Comr* [1989] RA 221, NI Lands Tribunal (garage used for servicing charity's buses not exempt because hereditament not used wholly or mainly for charitable purposes); *Re Hatschek's Patents, ex p Zerenner* [1909] 2 Ch 68; *Miller v Otilie (Owners)* [1944] KB 188, [1944] 1 All ER 277, CA; *Franklin v Gramophone Co Ltd* [1948] 1 KB 542 at 555, [1948] 1 All ER 353 at 358, CA, per Somervell LJ; *Berthelemy v Neale* [1952] 1 All ER 437, CA. As to the meaning of 'charity' see PARA 426 note 2.

5 *Oxfam v Birmingham City District Council* [1976] AC 126, [1975] 2 All ER 289, HL, where shops occupied by a charity and used to sell goods, most of which were donated, in order to raise funds for spending on charitable purposes were held not to be mainly used for charitable purposes. It does not appear to provide relief to trading shops run by charities, ie shops wholly or mainly used to sell goods bought under normal trading conditions, or to 'fifty-fifty' shops in which goods are deposited for sale and the net proceeds of sale are divided between the donor and the charity. Nor did it cover the facts of *Royal Society for the Protection of Birds v Brighton Borough Council* [1982] RA 33. The actual decision in *Oxfam v Birmingham City District Council* above, but not its reasoning, was reversed by what is now the Local Government Finance Act 1988 s 64(10) (which has its origins in the Rating (Charity Shops) Act 1976 s 1(1) (repealed)) (see the text to note 6). However, the selling in a shop of goods manufactured by blind persons in order to facilitate the provision of employment for the blind has been held to be a use for charitable purposes: *Belfast Association for Employment of Industrious Blind v Northern Ireland Valuation Comr* [1968] NI 21; and see *Royal Society for the Protection of Birds v Brighton Borough Council* above.

6 Local Government Finance Act 1988 s 64(10). This has the effect of reversing the decision in *Oxfam v Birmingham City District Council* [1976] AC 126, [1975] 2 All ER 289, HL (see note 5). However, the reasoning of the decision in *Oxfam v Birmingham City District Council* above is unaffected.

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(C) UNOCCUPIED HEREDITAMENTS

429. Liability for unoccupied hereditaments where the ratepayer is a charity.

Where a ratepayer¹ is a charity² or trustees for a charity and it appears that when next in use the hereditament³ will be wholly or mainly used for charitable purposes⁴, whether of that charity or of that and other charities, the chargeable amount for a chargeable day⁵ is zero⁶.

1 Ie the person subject to the non-domestic rate: see the Local Government Finance Act 1988 s 45(1); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 62.

2 As to the meaning of 'charity' see PARA 426 note 2.

3 As to the meaning of 'hereditament' see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 33 et seq.

4 As to the meaning of 'wholly or mainly used for charitable purposes' see PARA 428.

5 As to the meaning of a chargeable day see the Local Government Finance Act 1988 s 45(3); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 78.

6 See the Local Government Finance Act 1988 s 45A(1), (2); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 78. These provisions apply from the year 2008-2009 onwards: see the Rating (Empty Properties) Act 2007 s 3(3).

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B. DISCRETIONARY RELIEF FOR CHARITIES

430. Scope of discretion.

Where an unoccupied hereditament is not zero-rated¹ and certain conditions are fulfilled for a day which is a chargeable day², then the chargeable amount for the day is not to be determined by the general rules³ but is determined by, or found in accordance with rules determined by, the billing authority concerned⁴. Such provisions apply where one or more of the following applies on the chargeable day:

- 333 (1) the ratepayer⁵ is a charity⁶, or trustees for a charity, and the hereditament⁷ is wholly or mainly used for charitable purposes (whether of that charity or of that charity and other charities)⁸;
- 334 (2) the hereditament is not an excepted hereditament⁹, and all or part of it is occupied¹⁰ for the purposes of¹¹ one or more institutions or other organisations¹² none of which is established or conducted for profit¹³ and each of whose main objects¹⁴ are charitable or are otherwise philanthropic or religious¹⁵ or concerned with¹⁶ education¹⁷, social welfare¹⁸, science, literature or the fine arts¹⁹.

1 Ie the provisions of the Local Government Finance Act 1988 s 45A (see PARA 429) do not apply: see s 47(10); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 80.

2 One such condition is that during a period which consists of or includes the chargeable day, a decision of the billing authority concerned must operate to the effect that the Local Government Finance Act 1988 s 47 applies as regards the hereditament concerned: see s 47(3); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 78. As to the meaning of a chargeable day see s 45(3); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 78. As to conditions that apply in relation to former agricultural premises and small businesses see s 47(1), (3A)-(3D); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 78.

3 Ie the Local Government Finance Act 1988 ss 43(4)-(6B), 44, 45(4)-(4B), 46, regulations under s 57A or 58 or any provision of or made under Sch 7A (as the case may be) do not apply as regards the day.

4 See the Local Government Finance Act 1988 s 47; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 80.

5 Ie the person subject to the non-domestic rate: see the Local Government Finance Act 1988 s 45(1); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 62.

6 As to the meaning of 'charity' see PARA 426 note 2.

7 As to the meaning of 'hereditament' see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 33 et seq.

8 See the Local Government Finance Act 1988 s 47(2)(a); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 78. As to the meaning of 'wholly or mainly used for charitable purposes' see PARA 428.

9 As to when a hereditament is an excepted hereditament see the Local Government Finance Act 1988 s 47(9); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 80.

10 As to occupation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 12 et seq. If a hereditament is wholly unoccupied but it appears that it or any part of it when next occupied will be occupied for particular purposes, the hereditament or part concerned, as the case may be, is to be treated as occupied for these purposes: see s 48(5) (amended by the Local Government Act 2003 s 64(4) and the Rating (Empty Properties) Act 2007 Sch 2 para 1).

11 The phrase 'occupied for the purposes of' is not to be read as 'occupied exclusively for the purposes of': *Royal London Mutual Insurance Society Ltd v Hendon Corpn* (1958) 3 RRC 76, 56 LGR 285, 122 JP 310, 171 Estates Gazette 605

The cases cited in this paragraph which were decided prior to the coming into force of the Local Government Finance Act 1988 must now be considered in relation to the non-domestic rating provisions in Pt III (ss 41-67) (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 3 et seq). As to the history of the rating legislation see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

12 On similar wording in the Rating and Valuation (Miscellaneous Provisions) Act 1955 s 8 (repealed), it was held to be not always right to take the occupier and treat him as the organisation: *Skegness UDC v Derbyshire Miners' Welfare Committee* [1959] AC 807 at 827, [1959] 2 All ER 258 at 265, HL, per Lord Denning; *Isaacs v Market Bosworth RDC* [1960] 1 All ER 433, [1960] 1 WLR 277 (trustees of trade union memorial home; organisation for whose purposes hereditament occupied was the trade union; hereditament not entitled to relief); cf *National Children's Home and Orphanage Registered Trustees v Penarth UDC* (1960) 53 R & IT 166 (trustees of approved school not occupying for purposes of Home Secretary; school entitled to relief); *Trustees of the Benevolent and Orphan Fund, National and Local Government Officers' Association v Bournemouth Corpn* (1957) 1 RRC 363 (quarter sessions).

13 The same words in the Rating and Valuation (Miscellaneous Provisions) Act 1955 s 8 (repealed) were held to mean not established or conducted for the purpose of making profit; accordingly a direction to the trustees of a charity to make investments in order to produce revenue and increase capital does not make the organisation one which is established or conducted for profit: *Guinness Trust (London Fund) Founded 1890, Registered 1902 v West Ham Corpn* [1959] 1 All ER 482, [1959] 1 WLR 233, CA. The financial gains made by a friendly society from investments do not make the society one which is established or conducted for profit: *Trustees of National Deposit Friendly Society v Skegness UDC* [1959] AC 293, [1958] 2 All ER 601, HL. A zoo held to be an educational charity is not conducted for profit merely because it makes a financial surplus on its operations: *North of England Zoological Society v Chester RDC* [1959] 3 All ER 116, [1959] 1 WLR 773, CA. See also *Working Men's Club and Institute Union Ltd v Swansea Corpn* [1959] 3 All ER 769, [1959] 1 WLR 1197, CA, where a society registered under what is now the Industrial and Provident Societies Act 1965 was held not to be established or conducted for profit. See also *Ladbroke Park Golf Club Ltd v Stratford-on-Avon RDC* (1957) 1 RRC 202; *Reinshaw Park Golf Club v Chesterfield RDC* (1957) 1 RRC 281; *Mid-Kent Golf Club Ltd v Gravesend Borough Council* (1957) 50 R & IT 613, where golf clubs were held, at quarter sessions, not to be established or conducted for profit merely because of incidental financial gains.

14 On the same words in the Rating and Valuation (Miscellaneous Provisions) Act 1955 (repealed), it was held that the main objects must be sought in the written constitution, if there is one: *Berry v St Marylebone Borough Council* [1958] Ch 406, [1957] 3 All ER 677, CA; *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540 at 559, [1959] 1 All ER 325 at 332, HL, per Lord Keith of Avonholm; *Victory (Ex-Services) Association Ltd v Paddington Borough Council* [1960] 1 All ER 498, [1960] 1 WLR 106, DC; *Royal College of Nursing v St Marylebone Corpn* [1959] 3 All ER 663, [1959] 1 WLR 1077, CA. The activities of the organisation may be relevant in determining which of the objects are the main objects (*Berry v St Marylebone Borough Council*; *Working Men's Club and Institute Union Ltd v Swansea Corpn* [1959] 3 All ER 769, [1959] 1 WLR 1197, CA; *Trustees of National Deposit Friendly Society v Skegness UDC* [1959] AC 293 at 320, [1958] 2 All ER 601 at 612, HL, per Lord Denning); or where there is ambiguity in the objects (*North of England Zoological Society v Chester RDC* [1959] 3 All ER 116, [1959] 1 WLR 773, CA; *Nottingham Mechanics Institution v City of Nottingham* (1958) 3 RRC 359; *English-Speaking Union v Westminster City Council* (1959) 4 RRC 97, DC).

15 The objects of theosophy were held not to be 'concerned with the advancement of religion' within the meaning of the Rating and Valuation (Miscellaneous Provisions) Act 1955 s 8 (repealed) (*Berry v St Marylebone Borough Council* [1958] Ch 406, [1957] 3 All ER 677, CA); and so were the objects of freemasonry (*United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 3 All ER 281, [1957] 1 WLR 1080, CA). See also *Trustees of National Deposit Friendly Society v Skegness UDC* [1959] AC 293 at 322, [1958] 2 All ER 601 at 614, HL, per Lord Denning.

16 On the words in the Rating and Valuation (Miscellaneous Provisions) Act 1955 s 8 (repealed) 'concerned with the advancement of religion, education or social welfare', it was held that the organisation must be substantially altruistic or benevolent in its purposes, although not necessarily in the limited sense applied to

charities: *Trustees of National Deposit Friendly Society v Skegness UDC* [1959] AC 293, [1958] 2 All ER 601, HL; *Independent Order of Odd Fellows, Manchester Unity Friendly Society v Manchester Corp'n* [1958] 3 All ER 378, [1958] 1 WLR 1171, CA; *Working Men's Club and Institute Union Ltd v Swansea Corp'n* [1959] 3 All ER 769, [1959] 1 WLR 1197, CA. The crucial test was the purpose to which the money was devoted, not the motives of its donors: *Skegness UDC v Derbyshire Miners' Welfare Committee* [1959] AC 807 at 824, [1959] 2 All ER 258 at 263, HL, per Viscount Simonds; explained in *Waterson v Hendon Borough Council* [1959] 2 All ER 760, [1959] 1 WLR 985. The size of the class of persons to be benefited was irrelevant: *Skegness UDC v Derbyshire Miners' Welfare Committee* above.

17 The main objects of the Chartered Insurance Institute are not the advancement of education but the benefit of the profession of insurance generally: *Chartered Insurance Institute v London Corp'n* [1957] 2 All ER 638, [1957] 1 WLR 867, DC. The main objects of the English-Speaking Union are not concerned with the advancement of education (*English-Speaking Union v Westminster City Council* (1959) 4 RRC 97); nor are those of the Theosophical Society (*Berry v St Marylebone Borough Council* [1958] Ch 406, [1957] 3 All ER 677, CA). See *Trustees of National Deposit Friendly Society v Skegness UDC* [1959] AC 293 at 322, [1958] 2 All ER 601 at 613, HL, per Lord Denning. At quarter sessions, the Oxford Union Society (*Oxford Union Society v City of Oxford* (1957) 2 RRC 54) and two dramatic societies (*Newport Playgoers' Society v Newport County Borough Council* (1957) 1 RRC 279; *Trustees of Stoke-on-Trent Repertory Players v Stoke-on-Trent Corp'n* (1957) 1 RRC 353) have been held to be concerned with the advancement of education.

18 It has been said that 'social welfare' is not the same as 'social well-being', but savours more of those needs of the community which, as a matter of social ethics, ought to be met in the attainment of some acceptable standard: *Trustees of National Deposit Friendly Society v Skegness UDC* [1959] AC 293 at 314, [1958] 2 All ER 601 at 609, HL, per Lord MacDermott. The needs which are met need not be financial: *Victory (Ex-Services) Association Ltd v Paddington Borough Council* [1960] 1 All ER 498, [1960] 1 WLR 106, DC, where it was held that to promote comradeship between and improve the conditions and welfare of all ranks past and present advanced social welfare. Public benefit alone is not the test of social welfare (*General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540, [1959] 1 All ER 325, HL); and 'social welfare' is a narrower phrase than 'social improvement' (*Nottingham Mechanics Institution v City of Nottingham* (1958) 3 RRC 359). An organisation which provides benefits only for its members is not concerned with the advancement of social welfare: *Working Men's Club and Institute Union Ltd v Swansea Corp'n* [1959] 3 All ER 769, [1959] 1 WLR 1197, CA; *Waterson v Hendon Borough Council* [1959] 2 All ER 760, [1959] 1 WLR 985. A holiday camp run by a miners' welfare committee has been held to be concerned with the advancement of 'social welfare': *Skegness UDC v Derbyshire Miners' Welfare Committee* [1959] AC 807, [1959] 2 All ER 258, HL. See also *Independent Order of Odd Fellows, Manchester Unity Friendly Society v Manchester Corp'n* [1958] 3 All ER 378, [1958] 1 WLR 1171, CA; *Berry v St Marylebone Borough Council* [1958] Ch 406, [1957] 3 All ER 677, CA; and, at quarter sessions, *Trustees of West Ham Boys' and Amateur Boxing Club v West Ham County Borough Council* (1957) 2 RRC 44; *Trustees of Fegg Hayes Welfare Club and Institute v Stoke-on-Trent Corp'n* (1957) 1 RRC 353; *Trustees of Wearmouth Colliery Welfare Fund v Sunderland County Borough Council* (1956) 1 RRC 272; *Wearmouth Colliery Cricket Club v Sunderland County Borough Council* (1956) 1 RRC 277.

19 See the Local Government Finance Act 1988 s 47(2)(b); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 80. Societies which were instituted for the purpose of science, literature or the fine arts exclusively were at one stage exempted from rates, provided that certain other conditions were fulfilled, by the Scientific Societies Act 1843 s 1 (repealed). Many decisions were made as to societies which were to be treated as exempt, and as to others which were so instituted but were not exempt because a condition of exemption was not satisfied; some societies were held not to be exclusively instituted for the requisite purposes but might now qualify for discretionary relief on the ground that their main objects are concerned with science, literature or the fine arts. 'Science' has been held to include applied science: *R v Royal Medical and Chirurgical Society of London* (1857) 21 JP 789 at 791. The fine arts must be distinguished from the arts: *R v Institution of Civil Engineers* (1879) 5 QBD 48 at 52, DC. Music is one of the fine arts (*Royal College of Music v Westminster Vestry* [1898] 1 QB 809, CA), and drama and acting may be (*Nonentities Society v Linley (Valuation Officer) and Kidderminster Borough Council* (1954) 47 R & IT 426, CA), but folk dancing is not (*O'Sullivan (Valuation Officer) v English Folk Dance and Song Society* [1955] 2 All ER 845, [1955] 1 WLR 907, CA).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(3) MANAGEMENT OF TRUST PROPERTY/(v) Taxes/431. Income and corporation taxation.

(v) Taxes

431. Income and corporation taxation.

Charitable companies enjoy a number of exemptions from the incidence of corporation tax¹, in particular from tax in respect of:

- 335 (1) any profits or gains from land vested in any person for charitable purposes², so far as they are applied to charitable purposes only³;
- 336 (2) distributions⁴ that arise in respect of shares vested in a person for charitable purposes, so far as they are applied to charitable purposes only⁵;
- 337 (3) nontrading profits in respect of loan relationships⁶; dividends or other distributions of a company⁷; distributions from unauthorised unit trusts⁸; annual payments not otherwise charged⁹; and non-trading gains on intangible fixed assets¹⁰; where the income in question forms part of the income of a charitable company or is, according to rules or regulations established by an Act of Parliament, charter, decree, deed of trust or will, applicable to charitable purposes only, and so far as it is applied to charitable purposes only¹¹;
- 338 (4) public revenue dividends on securities which are in the name of trustees, to the extent that the dividends are applicable and applied only for the repair of any cathedral, college, church, chapel, or any building used only for the purposes of divine worship¹²;
- 339 (5) the profits of any trade carried on by a charitable company, if the profits are applied solely to the purposes of the company and either the trade is exercised in the course of the actual carrying out of a primary purpose of the charitable company or the work in connection with the trade is mainly carried out by its beneficiaries¹³; and
- 340 (6) profits accruing to a charitable company from certain lotteries¹⁴, if the profits are applied solely to the charitable company's purposes¹⁵.

Any payment which is received by a charitable company from another charity, is not made for full consideration in money or money's worth, is not otherwise chargeable to corporation tax and is not otherwise of a description which (on a claim) would be eligible¹⁶ for relief from tax, is chargeable to corporation tax under the charge to corporation tax on income, but is eligible for relief from tax¹⁷ as if it were an annual payment¹⁸.

Relief does not apply to non-charitable expenditure incurred by a charitable company¹⁹. If in an accounting period a charitable company's non-charitable expenditure exceeds its total income and gains, the excess is treated as non-charitable expenditure of the previous period and any necessary adjustments must be made, whether by making assessments or otherwise²⁰.

Special provisions apply to certain transactions between charitable companies and substantial donors²¹.

Charitable trusts also enjoy a number of exemptions from the incidence of income tax²². In particular, under certain conditions²³, the income from the profits of a trade carried on by a charitable trust, the amounts treated as adjustment income in respect of a charitable trust²⁴ in respect of a trade carried on by the trust and post-cessation receipts arising from a trade carried on by a charitable trust which are received by the trustees of the trust or to which they are entitled, are not taken into account in calculating total income²⁵. Furthermore, providing certain conditions are met²⁶, any income or gains of a charitable trust that is or are chargeable to income tax under or by certain provisions²⁷ is not or are not taken into account in calculating total income²⁸. However there are certain circumstances where this provision does not apply; in particular any chargeable payments connected with exempt distributions²⁹; double taxation relief³⁰; gains from contracts for life insurance etc³¹; settlements where amounts are treated as the income of the settlor³²; transactions in land³³; and any other enactment specified in an order made by the Treasury³⁴.

The following are also not taken into account when calculating total income for the purposes of income tax:

- 341 (a) the profits of a trade carried on by a charitable trust so far as they arise from a VAT-exempt event³⁵;
- 342 (b) profits accruing to it from certain lotteries³⁶, if the profits are applied solely to the charitable company's purposes³⁷;
- 343 (c) income which is chargeable to income tax³⁸ in so far as it arises in respect of rents or other receipts from an estate, interest or right in or over land and the estate, interest or right is vested in any person for a charitable trust or for charitable purposes, so far as the income is applied to charitable purposes only³⁹;
- 344 (d) certain distributions⁴⁰ in so far as they arise in respect of shares vested in a person in trust for a charitable trust or for charitable purposes and so far as the income is applied to charitable purposes only⁴¹;
- 345 (e) certain forms of savings and investment income⁴², if it is income of a charitable trust or it is required, under an Act, court judgment, charter, trust deed or will, to be applied to charitable purposes only⁴³;
- 346 (f) public revenue dividends on securities which are in the name of trustees, to the extent that the dividends are applicable and applied only for the repair of any cathedral, college, church, chapel, or any building used only for the purposes of divine worship⁴⁴;
- 347 (g) profits or gains arising to a charitable trust from the disposal of certain deposit rights, so far as these are applied to charitable purposes only⁴⁵;
- 348 (h) offshore income gains, if the gain is applicable and applied to charitable purposes only⁴⁶;
- 349 (i) certain miscellaneous income, so far as it is applied to charitable purposes only⁴⁷;
- 350 (j) income from estates in administration, so far as this is applied to charitable purposes only⁴⁸.

Tax relief is given, under the Gift Aid scheme, for donations to charity by individuals if the donation is a qualifying one⁴⁹. The donor must give an appropriate declaration in relation to the donation to the charity⁵⁰. Qualifying donations to charity by companies may also be given tax relief under the Gift Aid scheme, and are, subject to certain conditions, deductible in computing their profits⁵¹. Relief is also given for donations under a payroll deduction scheme⁵².

1 See the Income and Corporation Taxes Act 1988 s 505; and **INCOME TAXATION** vol 23(2) (Reissue) PARAS 1177-1179. For these purposes, 'charitable company' means any body of persons established for charitable purposes only (s 506(1) (added by the Income Tax Act 2007 Sch 1(1) para 95(2))). It was held in *Camille and Henry Dreyfus Foundation Inc v IRC* [1956] AC 39, [1955] 3 All ER 97, HL that the definition of 'charity' for income tax purposes in the precursor to the same Act is limited to a body of persons or trust established in the United Kingdom and excludes a body or trust established elsewhere, and so by extension the 'charity company' is presumably limited to a body of persons established in the United Kingdom. As to the determination of what charitable purposes are by reference to the activities of the organisation see *IRC v Oldham Training and Enterprise Council* [1996] STC 1218, 69 TC 231; *Southwood v A-G* [1998] 40 LS Gaz R 37, (1998) Times, 26 October (affd [2000] NLJR 1017, (2000) Times, 18 July, CA).

As to exemptions from tax in relation to the National Heritage Memorial Fund, the Historic Buildings and Monuments Commission for England, the British Museum, the Natural History Museum and the National Endowment for Science, Technology and the Arts see the Income and Corporation Taxes Act 1988 s 507; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1175. As to exemptions from tax in relation to scientific research organisations see the Income and Corporation Taxes Act 1988 s 508; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1176.

2 Ie tax under the Corporation Tax 2009 Pts 3 and 4.

3 See the Income and Corporation Taxes Act 1988 s 505(1)(a); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177.

4 Ie tax under the Corporation Tax Act 2009 Pts 3 and 4, or the Income Tax (Trading and Other Income) Act 2005 Ps 2 and 3, in respect of distributions to which the Finance Act 2006 s 121 applies.

- 5 See the Income and Corporation Taxes Act 1988 s 505(1)(aa); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177.
- 6 Ie tax under the Corporation Tax Act 2009 s 299: see the Income and Corporation Taxes Act 1988 s 505(1)(c)(ii); and **INCOME TAXATION**.
- 7 Ie tax under the Corporation Tax Act 2009 Pt 9A; see the Income and Corporation Taxes Act 1988 s 505(1)(iizaa); and **INCOME TAXATION**.
- 8 Ie tax under the Corporation Tax 2009 Pt 10 Ch 5: see the Income and Corporation Taxes Act 1988 s 505(1)(iiza); and **INCOME TAXATION**.
- 9 Ie tax under the Corporation Tax 2009 Pt X Ch 7: see the Income and Corporation Taxes Act 1988 s 505(1)(iizb); and **INCOME TAXATION**.
- 10 Ie tax under the Corporation Tax 2009 Pt 8: see the Income and Corporation Taxes Act 1988 s 505(1)(iic); and **INCOME TAXATION**.
- 11 See the Income and Corporation Taxes Act 1988 s 505(1)(c); and **INCOME TAXATION**. The importance of the requirement that the income be applied for charitable purposes only is illustrated by *IRC v Educational Grants Association Ltd* [1967] Ch 993, [1967] 2 All ER 893, CA; and see also *George Drexler Ofrex Foundation Trustees v IRC* [1966] Ch 675, [1965] 3 All ER 529; *Sheppard (Trustees of the Woodland Trust) v IRC (No 2)* [1993] STC 240. It was held in *IRC v Helen Slater Charitable Trust Ltd* [1982] Ch 49, [1981] 3 All ER 98, CA, that income had been so applied where a charitable corporation, acting intra vires, made an outright transfer of money applicable to charitable purposes to another charity so as to pass to that other charity full title to the money. See also *Report of the Charity Commissioners for England and Wales for 1988* (HC Paper (1988-89) no 319) paras 41-44. As to problems in relation to annual payments to charities see *IRC v National Book League* [1957] Ch 488, [1957] 2 All ER 644, CA; *Campbell v IRC* [1970] AC 77, [1968] 3 All ER 588, HL.
- 12 See the Income and Corporation Taxes Act 1988 s 505(1)(d); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177.
- 13 See the Income and Corporation Taxes Act 1988 s 505(1)(e); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177. See further s 505(1B); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177.
- 14 The lottery must be (1) an exempt lottery within the meaning of the Gambling Act 2005 Sch 11 Pt 1 or 4; (2) promoted in accordance with a lottery operating licence within the meaning of Pt 5; or (3) promoted and conducted in accordance with the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, SI 1985/1204, art 133 or 135.
- 15 See the Income and Corporation Taxes Act 1988 s 505(1)(f); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177. This applies to tax under Sch D.
- 16 Ie by virtue of the Income and Corporation Taxes Act 1988 s 505(1): see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177.
- 17 Ie under the Income and Corporation Taxes Act 1988 s 505(1)(c): see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177.
- 18 See the Income and Corporation Taxes Act 1988 s 505(2); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177. This provision effectively reverses the decision in *IRC v Helen Slater Charitable Trust Ltd* [1982] Ch 49, [1981] 3 All ER 98, CA, and is designed to ensure that tax can be charged on the receipt of money by the transferee charity if it is not applied by it for charitable purposes only.
- 19 See the Income and Corporation Taxes Act 1988 s 505(4); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177. 'Charitable expenditure' means expenditure which is exclusively applied for charitable purposes: s 506(1) (definition added by the Finance Act 2006 s 55(2)(a)). See also the Income and Corporation Tax Act 1988 s 506(3)-(5); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177 et seq.
- 20 See the Income and Corporation Taxed Act 1988 s 505(5); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177. See also ss 505(6), (7), 506(2); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177 et seq.
- 21 See the Income and Corporation Taxes Act 1988 ss 506A-506C; and **INCOME TAXATION**. A person is a 'substantial donor' in respect of an accounting period if the charitable company receives relievably gifts of at least £25,000 from him in a period of 12 months in which the accounting period wholly or partly fails, or it receives relievably gifts of at least £150,000 in a period of six years in which the accounting period wholly or partly fails: see s 506A(2); and **INCOME TAXATION**.

- 22 See the Income Tax Act 2007 Pt 10 (ss 518-564); and **INCOME TAXATION**.
- 23 As to the conditions see the Income Tax Act 2007 ss 524(3), (4), 526(3), (4); and **INCOME TAXATION**.
- 24 Ie under the Income Tax (Trading and other Income) Act 2005 s 228; see **INCOME TAXATION**.
- 25 See the Income Tax Act 2007 ss 524, 526; and **INCOME TAXATION**. As to the meaning of 'charitable trade' see s 525; and **INCOME TAXATION**.
- 26 Ie that the income is, or the gains are, for a tax year in relation to which the condition specified in the Income Tax Act 2007 s 528 (see **INCOME TAXATION**) is met and that the income is, or the gains are, applied to the purposes of the charitable trust only; see s 527(4), (5); and **INCOME TAXATION**.
- 27 Ie under or by virtue of any provision to which the Income Tax Act 2007 s 1016 (see **INCOME TAXATION**) applies.
- 28 See the Income Tax Act 2007 s 527(1); and **INCOME TAXATION**. This does not apply to certain provisions: see s 527(2); and **INCOME TAXATION**.
- 29 Ie under the Income and Corporations Tax Act 1988 s 214; see **INCOME TAXATION**.
- 30 Ie under the Income and Corporations Tax Act 1988 s 804; see **INCOME TAXATION**.
- 31 Ie under the Income Tax (Trading and other Income) Act 2005 s Pt 4 Ch 9; see **INCOME TAXATION**.
- 32 Ie under the Income Tax (Trading and other Income) Act 2005 s Pt 5 Ch 5; see **INCOME TAXATION**.
- 33 Ie under the Income Tax Act 2007 s 755; see **INCOME TAXATION**.
- 34 See the Income Tax Act 2007 s 527(2); and **INCOME TAXATION**.
- 35 See the Income Tax Act 2007 s 529(1); and **INCOME TAXATION**. This provision applies so far as the profits are applied to the purposes of the charitable trust only: s 529(2). An event is a VAT-exempt event if the supply of goods and services by the charitable trust in connection with the event would be exempt from value added tax under the Value Added Tax Act 1994 Sch 9 Group 12 (fund-raising events by charities and other qualifying bodies); Income Tax Act 2007 s 529(3).
- 36 See note 14.
- 37 See the Income Tax Act 2007 s 530; and **INCOME TAXATION**.
- 38 Ie under the Income Tax (Trading and other Income) Act 2005 Pt 2 or 3; see **INCOME TAXATION**.
- 39 Income Tax Act 2007 s 531(1)-(3); see **INCOME TAXATION**.
- 40 Ie distributions to which the Finance Act 2006 s 121 applies and which are chargeable to income tax under the Income Tax (Trading and other Income) Act 2005 Pt 2 or 3; see **INCOME TAXATION**.
- 41 See the Income Tax Act 2007 s 531(2A), (3); and **INCOME TAXATION**.
- 42 Ie the following income: interest, a dividend or other distribution of a UK resident company, a dividend of a non-UK resident company, an annuity payment under a purchased life annuity, profits on the disposal of deeply discounted securities, or income treated for the purposes of the Income Tax (Trading and other Income) Act 2005 Pt 4 Chapter 10 (distributions from unauthorised unit trusts) as received by a unit holder from a scheme to which s 547 applies (unauthorised unit trust schemes); see the Income Tax Act 2007 s 532(2); and **INCOME TAXATION**.
- 43 See the Income Tax Act 2007 s 532; and **INCOME TAXATION**.
- 44 See the Income Tax Act 2007 s 533; and **INCOME TAXATION**.
- 45 See the Income Tax Act 2007 s 534; and **INCOME TAXATION**.
- 46 See the Income Tax Act 2007 s 535; and **INCOME TAXATION**.
- 47 See the Income Tax Act 2007 s 536; and **INCOME TAXATION**.

- 48 See the Income Tax Act 2007 s 537; and **INCOME TAXATION**.
- 49 See the Income Tax Act 2007 Pt 8 Ch 2 (ss 413-430), ss 520-521; the Finance Act 1990 s 25; and **INCOME TAXATION**.
- 50 See the Income Tax Act 2007 ss 416(1)(b), 428; and **INCOME TAXATION**.
- 51 See the Income Tax Act 2007 s 522; and **INCOME TAXATION**.
- 52 See the Income Tax (Earnings and Pensions) Act 2003 Pt XII (ss 713-715); and **INCOME TAXATION**.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(3) MANAGEMENT OF TRUST PROPERTY/(v) Taxes/432. Capital gains tax and inheritance tax.

432. Capital gains tax and inheritance tax.

A capital gain which accrues to a charity¹ and is applicable and applied for charitable purposes is not chargeable to capital gains tax². However, if property held on charitable trusts ceases to be subject to those trusts, the property is deemed to have been disposed of and immediately re-acquired by the trustees at current market value, and capital gains tax is charged on any notional gain resulting³. Capital gains tax is not chargeable on gifts to charities⁴.

Transfers of value are exempt from inheritance tax to the extent that the values transferred by them are attributable to property which is given to charities so as to become the property of charities or held on trust for charitable purposes only⁵. The exemption does not apply to a disposition which: (1) takes effect on the termination after the transfer of value of any interest or period; or (2) depends upon a condition which is not satisfied within 12 months after the transfer; or (3) is defeasible⁶. Nor does it apply in relation to property which is an interest in other property if that interest is less than the donor's, or the property is given for a limited period⁷, nor where property is given subject to the reservation of an interest⁸.

1 This requirement is not satisfied if the asset is comprised in a deceased person's estate and the estate is still being administered, even though the residue, once ascertained, will be held on exclusively charitable trusts: *Prest (Inspector of Taxes) v Bettinson* [1980] STC 607, 53 TC 437.

2 See the Taxation of Chargeable Gains Act 1992 s 256(1); and **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 279. This is subject to the Income and Corporation Taxes Act 1988 s 505(4) (see PARA 431). Special provisions apply in the case of a charitable trust which has a non-exempt amount under the Income Tax Act 2007 s 540 (see PARA 431): see the Taxation of Chargeable Gains Act 1992 ss 256(3)-(6) 256A, 256B; and **CAPITAL GAINS TAXATION**.

3 See the Taxation of Chargeable Gains Act 1992 s 256(2); and **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 279.

4 See the Taxation of Chargeable Gains Act 1992 s 257; and **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 280.

This provision does not apply if the gift one which is related to the provisions for relief for venture capital trusts under s 151A: see s 257(1); and **CAPITAL GAINS TAXATION**.

5 See the Inheritance Tax Act 1984 s 23(1), (6); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 520. As to gifts for national purposes see s 25, Sch 3; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 523. The Inheritance Tax Act 1984 consolidated provisions of the Finance Act 1975 Pt III and other enactments relating to capital transfer tax, renamed by the Finance Act 1986 s 100 as inheritance tax, which replaced estate duty. See generally **INHERITANCE TAXATION**.

6 See the Inheritance Tax Act 1984 s 23(2); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 520.

7 See the Taxation of Chargeable Gains Act 1992 s 23(3); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 520.

8 See the Taxation of Chargeable Gains Act 1992 s 23(4); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 520.

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433. Stamp duty.

The appointment of a new trustee is no longer liable to stamp duty¹. A conveyance, transfer or lease made or agreed to be made to a charity² is now³ exempt from stamp duty⁴, provided it has been adjudicated and duly stamped⁵.

1 See the Finance Act 1985 ss 85, 98(6), Sch 24, Sch 27 Pt IX (2) which repealed the relevant part of the Stamp Act 1891 Sch 1.

2 Including the Trustees of the National Heritage Memorial Fund or the National Endowment for Science, Technology and the Arts: see the Finance Act 1982 s 129(1); and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1093.

3 In relation to instruments executed on or after 22 March 1982: see the National Endowment for Science, Technology and the Arts s 129(3); and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1093.

4 In stamp duty under the Finance Act 1999 s 112(3), Sch 13 paras 1-16: see **STAMP DUTIES AND STAMP DUTY RESERVE TAX**.

5 See the Finance Act 1982 s 129(1), (2); and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1093. See also the Stamp Act 1891 s 62, Sch 1 (repealed with savings in relation to transfers or other instruments relating to units under a unit trust scheme); the Stamp Duty (Exempt Instruments) Regulations 1987, SI 1987/516; and **STAMP DUTIES AND STAMP DUTY RESERVE TAX**.

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434. Value added tax.

Value added tax is only chargeable on the supply of goods and services by a charity when the supply is in the course of a business carried on by the charity¹. Apart from tax paid on goods or services supplied to a charity for the purposes of any such business, a charity cannot recover by deduction or otherwise the input tax on goods or services supplied to it². In relation to a charity, the supply of certain goods or services are zero-rated supplies, including the sale, or letting on hire, by a charity of any goods donated to it for sale, the sale of donated goods by a taxable person who has agreed in writing to give all the profits of the sale to such a charity, and the export of any goods by a charity³.

1 See the Value Added Tax Act 1994 s 4(1); and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 18. It is not, therefore, chargeable on the supply of goods or services to objects of the charity, even if some payment is made for the goods or services. As to value added tax generally see **VALUE ADDED TAX**. See also *Yoga for Health Foundation v Customs and Excise Comrs* [1985] 1 CMLR 340, [1984] STC 360.

2 As to input tax see the Value Added Tax Act 1994 ss 24-26; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 215 et seq. See *Customs and Excise Comrs v British Railways Board* [1976] 3 All ER 100, [1976] 1 WLR 1036, CA; *British Institute of Management v Customs and Excise Comrs* [1978] VATTR 101 (institute supplied part of its services through a company limited by guarantee and the other part of its services as the sole trustee of the foundation it had set up: no justification for separate registration in respect of its activities as such charitable trustee); *Whitechapel Art Gallery v Customs and Excise Comrs* [1986] STC 156; *Customs and Excise Comrs v Bell Concord Educational Trust Ltd* [1990] 1 QB 1040, [1989] 2 All ER 217, CA.

3 See the Value Added Tax Act 1994 s 30, Sch 8, Pt II, Group 15; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 188. See *Lancer UK Ltd v Customs and Excise Comrs* [1986] VATTR 112 (washing machines designed primarily to clean medical and surgical equipment not 'relevant goods' within the Value Added Tax Act 1994 Sch 8 Pt II Group 15 note (3)(a)).

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(4) RECOVERY OF TRUST PROPERTY

(i) In general

435. Payment of legacies to charity.

Trustees of charities or charitable institutions who are entitled absolutely to legacies may demand immediate payment, notwithstanding any direction for accumulation¹. In the case of a charitable bequest which remained unapplied and accumulated for 30 years, the accumulations were held to pass with the original bequest². It is a different matter where there is an indefinite gift of income. It is a well-established proposition that such a gift to an individual carries the right to corpus, but that principle does not apply to a bequest to a charity, as a charity continues in perpetuity and effect can be given to a perpetual trust of income for its purposes³.

Interest is allowed on a charitable legacy as from the end of a year after the testator's death⁴.

1 *Harbin v Masterman* [1894] 2 Ch 184, CA (affd sub nom *Wharton v Masterman* [1895] AC 186, HL, overruling a previous doubt upon this point expressed in *Harbin v Masterman* (1871) LR 12 Eq 559); *Re Knapp, Spreckley v A-G* [1929] 1 Ch 341, where a direction to accumulate was held not to be binding, but to be a directory provision which the trustees ought prima facie to bear in mind and carry out.

2 *Forbes v Forbes* (1854) 18 Beav 552.

3 *Re Levy, Barclays Bank Ltd v Board of Guardians and Trustees for the Relief of the Jewish Poor* [1960] Ch 346, [1960] 1 All ER 42, CA; *Re Beesty's Will Trusts, Farrar v Royal Alfred Merchant Seamen's Society* [1966] Ch 223, [1964] 3 All ER 82. See PARAS 87, 130, 140.

4 *Fisher v Brierley (No 3)* (1861) 30 Beav 268.

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436. Remedies for recovery of trust property.

In addition to their right of action against the trustees for breach of trust¹, beneficiaries who have suffered from an improper alienation of the trust estate may in many instances follow the trust estate into the hands of the alienee², or attach the property into which the trust estate has been improperly converted³. They are entitled to take whichever remedy appears more beneficial⁴. To this extent, they have an equitable right to recover money paid to charitable institutions by executors under a mistake⁵, and that money may be traced, provided that it can be identified or disentangled where it has been mixed with other assets of the recipient institution⁶.

Unless the purchaser is protected by reason of the statutes of limitation⁷ or on the ground that he is a purchaser for value without notice, a conveyance to him of charity property which constitutes a breach of trust may be set aside⁸. The same rule applies in the case of a lease in breach of trust⁹. In the absence of collusion or fraud, the court, on setting aside a sale¹⁰ or a lease¹¹, may direct that an allowance should be made in respect of buildings or other permanent improvements erected or made on the land.

1 See PARAS 446-453; and **TRUSTS** vol 48 (2007 Reissue) PARA 1084 et seq.

2 *A-G v Kell* (1840) 2 Beav 575; *A-G v Compton* (1842) 1 Y & C Ch Cas 417.

3 *A-G v Newcastle Corpn* (1842) 5 Beav 307; affd sub nom *Newcastle-upon-Tyne Corpn v A-G* (1845) 12 Cl & Fin 402, HL.

4 *A-G v Newcastle Corpn* (1842) 5 Beav 307 at 314 per Lord Langdale MR.

5 *Ministry of Health v Simpson* [1951] AC 251, [1950] 2 All ER 1137, HL. See further **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARAS 514-524.

6 *Re Diplock, Diplock v Wintle* [1948] Ch 465, [1948] 2 All ER 318, CA; affd, without reference to tracing of money, sub nom *Ministry of Health v Simpson* [1951] AC 251, [1950] 2 All ER 1137, HL. See further **EQUITY** vol 16(2) (Reissue) PARA 861 et seq.

7 For the statutory provisions governing the limitation of actions see generally the Limitation Act 1980; and **LIMITATION PERIODS**.

8 *A-G v Christ's Hospital* (1834) 3 My & K 344; *A-G v Brettingham* (1840) 3 Beav 91; *A-G v Kerr* (1840) 2 Beav 420; *A-G v Bishop of Manchester* (1867) LR 3 Eq 436. See also **TRUSTS**.

9 *Re Lawford Charity, ex p Skinner* (1817) 2 Mer 453 at 457 per Lord Eldon LC.

10 *A-G v Magdalen College, Oxford* (1854) 18 Beav 223.

11 *A-G v Kerr* (1840) 2 Beav 420.

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437. Purchaser with notice of trust.

A purchaser for value with notice that the property purchased is subject to charitable trusts takes subject to those trusts¹, and apart from the Statutes of Limitation², no length of possession will protect him³. Notice given at any time prior to the execution of the conveyance binds the purchaser⁴.

A person acquiring a charity estate for no valuable consideration is not entitled to protection, whether he had notice of the trusts or not⁵.

Where a person who purchased land with notice of an equitable right sells to another for value without notice, the latter is protected, even where the right is vested in a charity⁶.

After getting notice of the trust a purchaser for value without notice of a trust cannot subsequently protect himself by taking a conveyance of the legal estate from the trustee, for by taking such a conveyance he becomes a trustee himself⁷.

1 *Harding v Edge* (1682) 2 Cas in Ch 94; *A-G v Christ's Hospital* (1834) 3 My & K 344; *A-G v Flint* (1844) 4 Hare 147; *A-G v Hall* (1853) 16 Beav 388 at 392 per Romilly MR.

2 See *Incorporated Society in Dublin v Richards* (1841) 1 Dr & War 258; *A-G v Payne* (1859) 27 Beav 168; *A-G v Davey* (1859) 4 De G & J 136; and PARAS 443-444. As to the Limitation Act 1980 (which consolidated previous legislation relating to limitation of actions) generally see **LIMITATION PERIODS**.

3 *A-G v Christ's Hospital* (1834) 3 My & K 344; and see *Churcher v Martin* (1889) 42 ChD 312.

4 *Woodford Inhabitants v Parkhurst* (1639) Duke 70; and see *Roots v Williamson* (1888) 38 ChD 485 at 497-498 per Stirling J.

5 *Mansell v Mansell* (1732) 2 P Wms 678 at 681 per Lord King LC.

6 *Re Alms Corn Charity, Charity Comrs v Bode* [1901] 2 Ch 750, where, however, the early cases to the contrary, namely *East-Greensted's Case* (1633) Duke 64, and *Sutton Colefield Case* (1635) Duke 68, were not quoted. See also *Charitable Donations and Bequests Comrs v Wybrants* (1845) 2 Jo & Lat 182 at 194 per Lord Sugden LC; *A-G v Lord Gower* (1736) 2 Eq Cas Abr 195; Dart's Vendor and Purchaser (8th Edn, 1929) p 712; and **EQUITY** vol 16(2) (Reissue) PARA 861.

7 *Mumford v Stohwasser* (1874) LR 18 Eq 556 at 563 per Jessel MR, approving *Saunders v Dehew* (1692) 2 Vern 271.

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438. Boundaries of charity land.

A tenant of charity land is under an obligation to the charity to keep that land distinct from his own property during the tenancy¹. If the charity land has become intermixed with other land, the boundaries of the charity land must be ascertained by inquiry at chambers², and if they cannot be pointed out, then the value of the land formerly belonging to the charity must be ascertained³.

1 *A-G v Fullerton* (1813) 2 Ves & B 263; *Spike v Harding* (1878) 7 ChD 871, where it was said that the obligation rests on the tenant not merely at the end of the term when he comes to deliver up the property, but during the subsistence of the term also.

2 *Spike v Harding* (1878) 7 ChD 871. Formerly the procedure used was to issue a commission to inquire: see *A-G v Fullerton* (1813) 2 Ves & B 263 at 266 per Lord Eldon LC; *Reresby v Farrer* (1700) 2 Vern 414; *A-G v Bowyer* (1800) 5 Ves 300; *Solicitor-General v Bath Corp'n* (1849) 18 LJCh 275; *A-G v Stephens* (1855) 6 De GM & G 111. In *Spike v Harding* above this practice was said to have fallen into disuse in 1852.

3 *A-G v Fullerton* (1813) 2 Ves & B 263.

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(ii) Rentcharges

439. Purchase of land subject to charitable rentcharge.

A purchaser for value of land subject to a legal or equitable rentcharge in favour of a charity will take subject to that rentcharge unless (1) the rentcharge is registrable as a land charge and is void against him for want of registration¹; or (2) the sale is made in exercise of powers under the Settled Land Act 1925, and the rentcharge is capable of being overreached on such a sale²; or (3) in the case of an equitable rentcharge, the purchaser had no notice of it³.

1 See the Land Charges Act 1972 ss 2, 4; the Law of Property Act 1969 s 24; the Law of Property Act 1925 s 2(1)(i); and **LAND CHARGES** vol 26 (2004 Reissue) PARAS 616, 622 et seq; **REAL PROPERTY** vol 39(2) (Reissue) PARA 248. As to rentcharges generally see **RENTCHARGES AND ANNUITIES**.

2 See the Settled Land Act 1925 s 72; the Law of Property Act 1925 s 2(1)(i); and **SETTLEMENTS** vol 42 (Reissue) PARA 674; **REAL PROPERTY** vol 39(2) (Reissue) PARA 248.

3 *Re Alms Corn Charity, Charity Comrs v Bode* [1901] 2 Ch 750 at 760 per Stirling LJ. In the case of a legal rentcharge not within head (1) or (2) in the text, a purchaser for value takes subject to the charge whether or not he has notice: *East-Greensted's Case* (1633) Duke 64; *Peacock v Thewer* (1638) Duke 82; *Wharton v Charles* (1673) Cas temp Finch 81; Sugden's Law of Vendors and Purchasers (14th Edn, 1862) p 722. See *Ind Coope & Co v Emmerson* (1887) 12 App Cas 300 at 306-307, HL, per Earl of Selborne; and cf *A-G v Wilkins* (1853) 17 Beav 285, discussed in Sugden's Law of Vendors and Purchasers (14th Edn, 1862) p 794 et seq.

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440. Remedies: in general.

Rentcharges created for charitable purposes and rentcharges created out of land belonging to charity are both subject to the same incidents and recoverable by the same remedies as other rentcharges¹.

Actions to recover rentcharges which appear to belong to charities may be brought by the Attorney General², or by the Charity Commission³. Charity trustees may also institute such proceedings⁴; and the county court has jurisdiction⁵.

If in any such proceedings it is shown that the rentcharge or other payment has at any time been paid for 12 consecutive years to or for the benefit of the charity, that is *prima facie* evidence of perpetual liability to the payment, and no proof of its origin is necessary⁶.

The repeal⁷ of the provisions in the Charities Act 1960⁸ relating to the redemption of rentcharges does not affect any notice to treat given prior to 1 January 1993⁹.

1 See **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARA 831 et seq.

2 See *A-G v Bolton* (1796) 3 Anst 820; *A-G v Jackson* (1805) 11 Ves 365; *A-G v Gascoigne* (1833) 2 My & K 647; *A-G v Naylor* (1863) 1 Hem & M 809.

3 Under the Charities Act 1993 s 32: see PARA 553. As to the Charity Commission see PARAS 538-572.

4 Such proceedings do not require the consent of the Commission under the Charities Act 1993 s 33 (see PARA 588), nor did they under the old law (see *Bassano v Bradley* [1896] 1 QB 645, DC).

- 5 See *Bassano v Bradley* [1896] 1 QB 645, DC; the County Courts Act 1984 s 21(2); and **COURTS**.
- 6 See the Charities Act 1993 s 93(1).
- 7 le by the Charities Act 1992 ss 37(5), 78(2), Sch 7 (repealed).
- 8 le the Charities Act 1960 s 27(2)-(8).
- 9 See the Charities Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/1900, art 4(3).

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441. Uncertainty as to land charged.

Where there is a confusion of boundaries, or it is not known out of what land the rentcharge issues¹, or the legal title is not clear or is defective², a legal rentcharge may be enforced in equity in favour of a charity where the right could not be enforced at law³.

- 1 *A-G v Wilkins* (1853) 22 LJCh 830 at 832 per Romilly MR. See also **RENTCHARGES AND ANNUITIES**.
- 2 *Re Herbage Rents, Greenwich, Charity Comrs v Green* [1896] 2 Ch 811 at 825 per Stirling J; *Foley's Charity Trustees v Dudley Corpn* [1910] 1 KB 317, CA.
- 3 The law here enunciated is in accordance with the well-established principle that equity will aid defective assurances in favour of charity: see Shelford's Law of Mortmain (1836) 514.

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442. Time for recovery.

A defence founded on the Limitation Act 1980¹ may be a complete bar to an action to recover a charitable rentcharge², but time does not run where, by reason of the circumstances, no beneficiary is in a position to make a claim³.

- 1 The Limitation Act 1980 consolidated previous legislation relating to the limitation of actions. See generally **LIMITATION PERIODS**.
- 2 *A-G v Wilkins* (1853) 17 Beav 285 at 293 per Romilly MR; *A-G v Stephens* (1855) 6 De GM & G 111 at 146 per Lord Cranworth LC; *President etc of St Mary Magdalen College, Oxford v A-G* (1857) 6 HL Cas 189.
- 3 *A-G v Persse* (1842) 2 Dr & War 67, where a rentcharge was given as a salary for a schoolmaster to be appointed by a certain person; no appointment was made for 27 years, but nevertheless the rentcharge was not barred. See also *Incorporated Society in Dublin v Richards* (1841) 1 Dr & War 258 at 288 per Lord Sugden LC.

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(iii) Limitation of Actions

443. Limitation periods.

In proceedings against trustees¹, whether express or constructive, the general rule is that, except in cases of fraud, retention of the trust property, or conversion by the trustee to his own use², the right of a beneficiary to recover trust property, whether real or personal, or to sue in respect of any breach of trust, is barred after the expiration of six years³. Time runs from the date on which the right of action accrued⁴ or the date of the breach of trust⁵. It is very doubtful, however, whether these provisions have any application to a charitable trust because in most, if not all, charitable trusts there are no individual beneficiaries⁶. Certainly it has no application to an action by the Attorney General to enforce public charitable trusts⁷.

Claims by charities to land or rent are barred after the expiration of 12 years⁸, and claims by charities to an interest in the estate of a deceased person are also barred after the expiration of 12 years, and claims to arrears of interest of a legacy after the expiration of six years⁹.

1 'Trustee' has the same meaning as in the Trustee Act 1925 (see **TRUSTS** vol 48 (2007 Reissue) PARA 601): Limitation Act 1980 s 38(1).

2 See the Limitation Act 1980 s 21(1); and **LIMITATION PERIODS** vol 68 (2008) PARA 1140 et seq. See also s 21(2); and **LIMITATION PERIODS** vol 68 (2008) PARA 1140.

3 See the Limitation Act 1980 s 21(3); and **LIMITATION PERIODS** vol 68 (2008) PARA 1143.

4 See the Limitation Act 1980 s 21(3); and **LIMITATION PERIODS** vol 68 (2008) PARA 1144. As to what is the date of accrual of the right of action to recover land see s 15(6), (7), Sch 1; and **LIMITATION PERIODS** vol 68 (2008) PARA 1034 et seq.

5 *Thorne v Heard and Marsh* [1895] AC 495, HL.

6 *A-G v Cocke* [1988] Ch 414, [1988] 2 All ER 391, citing *Thomson v Trustees of the Honourable Society of the Inner Temple* (30 May 1967, unreported).

7 *A-G v Cocke* [1988] Ch 414 at 421, [1988] 2 All ER 391 at 395 per Harman J where it was also held that an action for an account was not 'an action . . . to recover trust property or in respect of any breach of trust' within the wording of the Limitation Act 1980 s 21(3).

8 See the Limitation Act 1980 s 15; and **LIMITATION PERIODS** vol 68 (2008) PARA 1159 et seq.

9 See the Limitation Act 1980 s 22; and **LIMITATION PERIODS** vol 68 (2008) PARA 1161. Cf *Cadbury v Smith* (1869) LR 9 Eq 37.

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444. Possession of land under void lease or conveyance.

Charity trustees may acquire a valid title to land by possession under a void lease¹. If no rent is paid, no tenancy is created, and the period of limitation runs from the date on which possession is acquired². The payment of rent, however small, establishes the relation of landlord and tenant; and where there is a tenancy at will the period of limitation runs from the actual termination of the tenancy³, but where there is a tenancy from year to year or other

period without a lease in writing, it runs from the end of the first year or other period⁴ or from the last payment of rent⁵.

1 *President and Governors of Magdalen Hospital v Knotts* (1879) 4 App Cas 324, HL (disabling Acts); *Bunting v Sargent* (1879) 13 ChD 330; *Webster v Southey* (1887) 36 ChD 9 at 19 per Kay J (mortmain); cf *Bishop of Bangor v Parry* [1891] 2 QB 277 (lack of consent of Charity Commissioners). It was held in *Churcher v Martin* (1889) 42 ChD 312 that under the Statutes of Limitation charity trustees might also acquire a valid title to land of which they had enjoyed possession under a conveyance rendered void for not complying with the Mortmain and Charitable Uses Act 1888 (repealed: see PARA 82).

2 *President and Governors of Magdalen Hospital v Knotts* (1879) 4 App Cas 324 at 334, HL, per Earl Cairns LC.

3 See **LIMITATION PERIODS** vol 68 (2008) PARA 1068. The Limitation Act 1939 s 9, which provided that a tenancy of will was deemed to be determined at the expiration of one year from its commencement, unless determined earlier, has been repealed: see **LIMITATION PERIODS** vol 68 (2008) PARA 1068.

4 See the Limitation Act 1980 s 15(6), Sch 1 para 5(1); and **LIMITATION PERIODS** vol 68 (2008) PARAS 1058, 1159.

5 See the Limitation Act 1980 Sch 1 para 5(2); and **LIMITATION PERIODS** vol 68 (2008) PARAS 1058, 1159. See also *Bunting v Sargent* (1879) 13 ChD 330; *Webster v Southey* (1887) 36 ChD 9; *President and Governors of Magdalen Hospital v Knotts* (1879) 4 App Cas 324 at 335, HL, per Lord Selborne.

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445. Claims adverse to charity barred.

The right to claim the benefit of a gift over of land from one charity to another, or of a reverter to the grantor, may be barred by effluxion of time¹. The charity trustees remain in possession under the original trusts, and not for their own benefit².

Time does not run in favour of a person who has obtained possession of charity land by fraud so long as the fraud is concealed, but it begins to run from the date of discovery or the date when with reasonable diligence it could have been discovered³.

1 See *Re Orchard Street Schools Trustees* [1878] WN 211; *Christ's Hospital v Grainger* (1849) 1 Mac & G 460; *Re Ingleton Charity, Croft v A-G* [1956] Ch 585, [1956] 2 All ER 881.

2 *Re Ingleton Charity, Croft v A-G* [1956] Ch 585, [1956] 2 All ER 881.

3 See the Limitation Act 1980 s 32; and **LIMITATION PERIODS** vol 68 (2008) PARA 1220 et seq. See also *Hovenden v Lord Annesley* (1806) 2 Sch & Lef 607 at 634 per Lord Redesdale LC; *Charitable Donations and Bequests Comrs v Wybrants* (1845) 2 Jo & Lat 182.

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(5) LIABILITY OF TRUSTEES

446. Misapplication of trust property.

In the absence of evidence to the contrary, it is presumed that trustees have faithfully discharged their duty¹.

Charity trustees, whether a corporate body or individuals, using trust money for their own purposes², for purposes not in accordance with the trusts³, occasioning the destruction of the trust property⁴, improperly alienating it⁵, or negligently allowing others to misappropriate it⁶, are strictly liable to make good any deficiency or loss⁷. A threatened application of charity property for non-charitable purposes will be restrained by injunction⁸.

Parish officials are not liable for breaches of trust committed by their predecessors in office⁹.

Although the court has been severe with trustees who wilfully, corruptly or negligently misapply the trust property, it has acted leniently where the administration of the funds has been honest but mistaken¹⁰, as, for example, where a wrong construction has been put on an ambiguous instrument of trust¹¹. Where a corporation is trustee, the court has tended to leniency more than in the case of individual trustees¹².

In certain circumstances the Charity Commission and the court have statutory powers to relieve a trustee from liability for breach of trust or duty¹³.

1 *A-G v Earl of Stamford* (1843) 1 Ph 737 at 747 per Lord Cottenham LC. As to the liabilities of trustees generally see **TRUSTS** vol 48 (2007 Reissue) PARA 1084 et seq.

2 *Kennington Hastings Case* (1612) Duke 71 (retainer by trustee of increase of rent on reletting of charity lands); *A-G v Bedford Corpn* (1754) 2 Ves Sen 505 (retainer by schoolmaster of charity school of usher's salary); *A-G v Bolton* (1796) 3 Anst 820 (retainer by vicar of charity annuity payable to preacher); *A-G v Dixie, ex p Bosworth School* (1805) 13 Ves 519.

3 *A-G v Brewers' Co* (1816) 1 Mer 495; *A-G v Cambridge Corpn* (1836) 5 LJCh 357.

4 *Ex p Greenhouse* (1815) 1 Madd 92 at 109 per Plumer V-C (chapel pulled down by trustees).

5 *A-G v East Retford Corpn* (1838) 3 My & Cr 484; *A-G v Wisbeach Corpn* (1842) 11 LJCh 412 (innocent but improper sale of charity lands in redemption of land tax on other lands belonging to the trustees); and see *A-G v Newark-upon-Trent Corpn* (1842) 1 Hare 395.

6 *A-G v Leicester Corpn* (1844) 7 Beav 176.

7 Charity trustees may obtain complete protection by seeking the advice of the Charity Commission under the Charities Act 1993 s 29 (see PARAS 387-388), or their authorisation for transactions under s 26 (see PARAS 381-385). They may also pay trust money into court under the Trustee Act 1925 s 63 (see PARA 605). As to funding of indemnity insurance by charities for trustees, see the Charities Act 1993 s 73F; and PARA 448.

8 *Baldry v Feintuck* [1972] 2 All ER 81, [1972] 1 WLR 552.

9 *Ex p Fowlser* (1819) 1 Jac & W 70; *French v Dear* (1800) 5 Ves 547.

10 *A-G v Exeter Corpn* (1826) 2 Russ 45 at 54 per Lord Eldon LC ('to act on any other principles would be to deter all prudent persons from becoming trustees of charities'); *A-G v Dean and Canons of Christ Church* (1826) 2 Russ 321; *A-G v Pretyman* (1841) 4 Beav 462 at 464; *Andrews v M'Guffog* (1886) 11 App Cas 313 at 324, HL, per Lord Watson. See also *A-G v Bowyer* (1798) 3 Ves 714 at 729 per Lord Thurlow LC.

11 *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1. See, however, *Ministry of Health v Simpson* [1951] AC 251, [1950] 2 All ER 1137, HL; affg *Re Diplock, Diplock v Wintle* [1948] Ch 465, [1948] 2 All ER 318, CA.

12 *A-G v Baliol College, Oxford* (1744) 9 Mod Rep 407 at 409-410 per Lord Hardwicke LC; *A-G v East Retford Corpn* (1833) 2 My & K 35 at 37-38 per Leach MR; *A-G v Newbury Corpn* (1834) 3 My & K 647 at 651 per Lord Brougham LC; *A-G v Caius College* (1837) 2 Keen 150 at 169 per Lord Langdale MR; *Edinburgh Corpn v Lord Advocate* (1879) 4 App Cas 823, HL.

13 See PARA 449.

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447. Power to relieve trustee etc from liability for breach of trust or duty.

The Charities Act 1993 makes provision for the Charity Commission¹ to make orders relieving a person wholly or partly from liability for breach of trust or breach of duty². The provision applies to a person who is or has been: (1) a charity trustee or trustee for a charity³; (2) a person appointed to audit a charity's accounts⁴ (whether appointed under an enactment or otherwise)⁵; or (3) an independent examiner, reporting accountant or other person appointed to examine or report on a charity's accounts (whether appointed under an enactment or otherwise)⁶. If the Commission considers that a person is or may be personally liable for a breach of trust or breach of duty committed in his capacity as such a person, but that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty, it may make an order relieving him wholly or partly from any such liability⁷. Such an order may grant the relief on such terms as the Commission thinks fit⁸.

The Act also extends the court's power under the Companies Act 2006 to grant relief to a person employed as an auditor by a company⁹ to: (a) a person falling within head (2) or (3) above, where the provisions of the Companies Act 2006 would not apply to him in that capacity¹⁰; and (b) as from a day to be appointed, a charity trustee of a CIO¹¹.

If it appears to the court that a trustee is or may be personally liable for any breach of trust but has acted honestly and reasonably and ought fairly to be excused for the breach and for omitting to obtain the court's directions in the matter in which he committed the breach, the court may relieve him wholly or partly from that personal liability¹². In such a case the onus is upon the trustee to prove that he acted both honestly and reasonably¹³: this is a question of fact depending on the circumstances of each case¹⁴.

1 As to the Charity Commission see PARAS 538-572.

2 See the Charities Act 1993 s 73D (added by the Charities Act 2006 s 38). The Charities Act 1993 ss 73D, 73E have effect in relation to acts or omissions before 27 February 2007 as well as on or after this day: see the Charities Act 2006 s 75(3), Sch 10 para 13. The Charities Act 1993 s 73D does not affect the operation of the Trustee Act 1925 s 61 (power of court to grant relief to trustees: see note 12), the Companies Act 2006 s 1157 (power of court to grant relief to officers or auditors of companies: see **COMPANIES**) or the Charities Act 1993 s 73E (which extends the Companies Act 2006 s 1157 to auditors etc of charities which are not companies): Charities Act 1993 s 73D(6) (as added; amended by SI 2008/948).

3 Charities Act 1993 s 73D(1)(a) (as added: see note 2). As to the meaning of 'charity trustee' see PARA 1 note 10.

4 For the purposes of the Charities Act 1993 ss 73D, 73E this is to be read as including a reference to the Auditor General for Wales acting as auditor under s 43B (see PARA 352) and any reference to a charity's accounts is to be read as including any group accounts prepared by the charity trustees of a charity: s 73D(5) (added by the Charities Act 2006 s 38). The Charities Act 1993 s 73D does not affect the operation of the Trustee Act 1925 s 61 (power of court to grant relief to trustees), the Companies Act 2006 s 1157 (power of court to grant relief to officers or auditors of companies: see **COMPANIES**) or the Charities Act 1993 s 73E (which extends the Companies Act 2006 s 1157 to auditors etc of charities which are not companies): Charities Act 1993 s 73D(6) (as added; amended by SI 2008/948).

5 Charities Act 1993 s 73D(1)(b) (as added: see note 2).

6 Charities Act 1993 s 73D(1)(c) (as added: see note 2).

7 Charities Act 1993 s 73D(2) (as added: see note 2). This does not however apply to any personal contractual liability of a charity trustee or trustee for a charity: s 72D(4) (as so added).

- 8 Charities Act 1993 s 73D(3) (as added: see note 2).
- 9 Charities Act 1993 s 73E(1) (as added (see note 2); amended by SI 2008/948). See also note 2.
- 10 Charities Act 1993 s 73E(2)(a) (as added (see note 2); amended by SI 2008/948).
- 11 Charities Act 1993 s 73E(2)(b) (as added (see note 2); not yet in force). As to CIOs see PARAS 240-253.
- 12 See the Trustee Act 1925 s 61; and **TRUSTS** vol 48 (2007 Reissue) PARA 1123. As to the court's jurisdiction under this provision see *Re Allsop, Whittaker v Bamford* [1914] 1 Ch 1, CA (decided under earlier legislation); *Re Pauling's Settlement Trusts, Younghusband v Coutts & Co* [1964] Ch 303, [1963] 3 All ER 1, CA. As to when relief will be granted see **TRUSTS** vol 48 (2007 Reissue) PARA 1123.
- 13 *National Trustees Co of Australasia v General Finance Co of Australasia* [1905] AC 373, PC; *Re Stuart, Smith v Stuart* [1897] 2 Ch 583.
- 14 *Re Turner, Barker v Ivimey* [1897] 1 Ch 536.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(5) LIABILITY OF TRUSTEES/448. Trustees' indemnity insurance.

448. Trustees' indemnity insurance.

The charity trustees of a charity¹ may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity². The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of: (1) any liability incurred by him to pay a fine imposed in criminal proceedings, or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising)³; (2) any liability incurred by him in defending any criminal proceedings in which he is convicted⁴ of an offence arising out of any fraud or dishonesty, or willful or reckless misconduct, by him⁵; or (3) any liability incurred by him to the charity that arises out of any conduct which he knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which he did not care whether it was in the best interests of the charity or not⁶.

The charity trustees of a charity may not purchase insurance under this provision unless they decide that they are satisfied that it is in the best interests of the charity for them to do so⁷. The statutory duty of care⁸ applies to a charity trustee when making such a decision⁹. These provisions do not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but have effect despite any provision prohibiting the charity trustees or trustees for the charity receiving any personal benefit out of the funds of the charity¹⁰.

- 1 As to the meaning of 'charity trustees' see PARA 1 note 10. As the meaning of 'charity' see PARA 1.
- 2 Charities Act 1993 s 73F(1) (s 73F added by the Charities Act 2006 s 39).
- 3 Charities Act 1993 s 73F(2)(a) (as added: see note 2).
- 4 For these purposes the reference to any such conviction is a reference to one that has become final; a conviction becomes final, if not appealed against, at the end of the period for bringing an appeal, or if appealed against, at the time when the appeal (or any further appeal) is disposed of; and an appeal is disposed of if it is

determined and the period for bringing any further appeal has ended or if it is abandoned or otherwise ceases to have effect: Charities Act 1993 s 73F(3) (as added: see note 2). The Minister may by order make such amendments of s 73F(2), (3) as he considers appropriate: s 73F(6) (as so added). At the date at which this volume states the law no such orders had been made.

- 5 Charities Act 1993 s 73F(2)(b) (as added: see note 2).
- 6 Charities Act 1993 s 73F(2)(c) (as added: see note 2).
- 7 Charities Act 1993 s 73F(4) (as added: see note 2).
- 8 le the duty of care in the Trustee Act 2000 s 1(1) (see PARA 334).
- 9 Charities Act 1993 s 73F(5) (as added: see note 2).
- 10 Charities Act 1993 s 73F(8) (as added: see note 2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(5) LIABILITY OF TRUSTEES/449. Accounts against defaulting trustees.

449. Accounts against defaulting trustees.

The general rule is that, in the absence of special circumstances¹, accounts are to be taken against the trustees from the date at which the misapplication commenced². Each case is, however, decided on its merits at the court's discretion, and therefore the dates to which accounts against charity trustees are carried back differ widely³. The court may decline to direct an account where the litigation would be expensive and the benefit to the charity problematical or trifling⁴.

Where the misapplication has been innocent, accounts are usually directed from the commencement of the action⁵; but they may also be ordered from the date at which notice was given to the trustees questioning the propriety of the application⁶, from the date of the decree declaring the application improper⁷, or from the date of the last appointment of a new trustee⁸. An account is not, it seems, directed against innocent trustees where their co-trustees are entirely responsible for the breach of trust⁹.

In dealing with charitable corporations which have acted mistakenly but honestly the court likewise has a considerable measure of discretion¹⁰.

1 Eg innocent misapplication: see the text and notes 5-9.

2 *A-G v Cashel Corpn* (1842) 3 Dr & War 294; *A-G v Davey* (1854) 19 Beav 521 at 527 per Romilly MR, where accounts were ordered from the dates when improper leases were granted. See also *A-G v Newbury Corpn* (1834) 3 My & K 647 at 653 per Lord Brougham LC, where the question of directing an account from the date of the foundation of the charity was discussed.

3 *A-G v Davey* (1854) 19 Beav 521 at 527 per Romilly MR. In *A-G v Pretymann* (1841) 4 Beav 462 at 467 per Lord Langdale MR, the question was referred by the court to the consideration of the Attorney General. As to the Attorney General's power to sanction compromises in such cases see *A-G v Exeter Corpn* (1822) Jac 443 at 448 per Plumer MR; *A-G v Exeter Corpn* (1827) 2 Russ 362; *A-G v Brettingham* (1840) 3 Beav 91; and cf *A-G v Carlisle Corpn* (1831) 4 Sim 275.

4 *A-G v Dixie, ex p Bosworth School* (1805) 13 Ves 519; *A-G v Cullum* (1836) 1 Keen 104; *A-G v Shearman* (1839) 2 Beav 104.

5 *A-G v Jolliffe* (1822) 1 LJOS Ch 43; *A-G v Winchester Corpn* (1824) 3 LJOS Ch 64; *A-G v Stationers' Co* (1831) 9 LJOS Ch 229; *A-G v Caius College* (1837) 2 Keen 150 at 166 per Lord Langdale MR; *A-G v Harper*, *A-G v Nash* (1838) 8 LJCh 12; *A-G v Drapers' Co, Kendrick's Charity* (1841) 4 Beav 67; *A-G v Drapers' Co, Kendrick's Charity* (1847) 10 Beav 558; *A-G v Christ's Hospital* (1841) 4 Beav 73; *A-G v Hall* (1853) 16 Beav 388 at 395 per Romilly

MR; *A-G v Davey* (1854) 19 Beav 521; *A-G v Master, Wardens etc of the Wax Chandlers' Co* (1873) LR 6 HL 1 at 15 per Lord Chelmsford.

6 *A-G v Berwick-upon-Tweed Corpn* (1829) Taml 239; *A-G v East Retford Corpn* (1833) 2 My & K 35 at 37 per Leach MR; *A-G v Cambridge Corpn* (1836) 5 LJCh 357.

7 *A-G v Tufnell* (1849) 12 Beav 35.

8 *A-G v Newbury Corpn* (1834) 3 My & K 647.

9 *A-G v Joliffe* (1822) 1 LJOS Ch 43; *A-G v Holland* (1837) 2 Y & C Ex 683, where co-trustees of a charity under a will were directed to act annually in rotation.

10 *Re Freeston's Charity, Sylvester v Master and Fellows of University College, Oxford* [1978] 1 All ER 481, [1978] 1 WLR 120; affd [1979] 1 All ER 51, [1978] 1 WLR 741, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(5) LIABILITY OF TRUSTEES/450. Liability for interest or profits.

450. Liability for interest or profits.

It has been held that, where a charity trustee uses the trust funds for trading purposes, he is accountable to the charity for any profit made, or for interest at the rate of 5 per cent if the latter is the larger amount¹; but in general a defaulting trustee is charged with interest at 4 per cent². However, these rates have been thought to be unrealistic in modern conditions³, and in some relatively recent non-charity cases it has been held that the proper rate of interest is 1 per cent above bank rate⁴, while in others it has been said that it should be that allowed from time to time on the court's short term investment account⁵. Whether the interest is simple or compound is in the discretion of the court⁶.

1 *A-G v Solly* (1829) 2 Sim 518, where a charity trustee who used the trust property for trading purposes was charged 5%, but not compound interest; *A-G v Cambridge Corpn* (1836) 5 LJCh 357; *Re Davis, Davis v Davis* [1902] 2 Ch 314, applied in the non-charity case of *Gordon v Gonda* [1955] 2 All ER 762, [1955] 1 WLR 885, CA.

2 *Jones v Foxall* (1852) 15 Beav 388 at 392 per Romilly MR; *A-G v Alford* (1855) 4 De GM & G 843 at 851 per Lord Cranworth LC; *Re Emmet's Estate, Emmet v Emmet* (1881) 17 ChD 142. In *A-G v Cambridge Corpn* (1836) 5 LJCh 357, the interest was 5%. As to trustees' liability to pay interest see **TRUSTS** vol 48 (2007 Reissue) PARAS 1106-1108.

3 See *Bartlett v Barclays Bank Trust Co Ltd (No 2)* [1980] Ch 515 at 547, [1980] 2 All ER 92 at 98 per Brightman LJ.

4 See *Belmont Finance Corpn Ltd v Williams Furniture Ltd (No 2)* [1980] 1 All ER 393, CA; *O'Sullivan v Management Agency and Music Ltd* [1985] QB 428, [1985] 3 All ER 351, CA.

5 See *Bartlett v Barclays Bank Trust Co Ltd (No 2)* [1980] Ch 515, [1980] 2 All ER 92. As to the court's short term investment account see the Administration of Justice Act 1965 s 6(1) (repealed: see now the Administration of Justice Act 1982 Pt VI (ss 38-48)).

6 See the cases cited in notes 1-5; *Incorporated Society in Dublin v Richards* (1841) 1 Dr & War 258 (where a trustee who set up a title adverse to the charity was charged compound interest); *A-G v Alford* (1855) 4 De GM & G 843 at 851 per Lord Cranworth LC. In other cases relating to private trusts (*Heighington v Grant* (1840) 5 My & Cr 258; *Jones v Foxall* (1852) 15 Beav 388) compound interest has been charged where trust funds had been employed in trade. See also the non-charity cases of *Burdick v Garrick* (1870) 5 Ch App 233; *Re Davis, Davis v Davis* [1902] 2 Ch 314; and **TRUSTS** vol 48 (2007 Reissue) PARA 1108.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(5) LIABILITY OF TRUSTEES/451. Liability of trustee's agent.

451. Liability of trustee's agent.

Where a trustee administers a charity by means of a mere agent, the latter is usually accountable in case of default only to his principal and not to the charity, as the ordinary law of agency is applicable to charity cases¹; but if the agent, knowing that a breach of trust is being committed, interferes and assists in the breach, or if a stranger intermeddles with the affairs and administration of a charity, each makes himself a quasi-trustee and as such personally answerable².

¹ *A-G v Earl of Chesterfield* (1854) 18 Beav 596. Note that in that case it was not alleged that the agent himself was in any sense a trustee. As to the relationship between principal and agent see further **AGENCY** vol 1 (2008) PARA 71 et seq.

² *A-G v Earl of Chesterfield* (1854) 18 Beav 596 at 599 per Romilly MR. See also *A-G v Leicester Corp'n* (1844) 7 Beav 176 (where a town clerk who retained trust funds with the consent of a municipal corporation, the actual trustee of the charity, was held jointly liable with the corporation for the breach of trust); *A-G v Wilson* (1840) Cr & Ph 1 (where a corporation was trustee of a charity and the members of the governing body were held liable for injury to the charity occasioned by their default); *Charitable Corp'n v Sutton* (1742) 2 Atk 400 at 405 per Lord Hardwicke LC. See also **TRUSTS** vol 48 (2007 Reissue) PARAS 698, 1088.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(5) LIABILITY OF TRUSTEES/452. Remedy against trustee corporation.

452. Remedy against trustee corporation.

When a corporation is declared liable to make good a loss caused by a breach of trust, the court does not charge the loss upon the general property of the corporation. The remedy is enforceable by process of sequestration¹.

¹ *A-G v East Retford Corp'n* (1838) 3 My & Cr 484.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(5) LIABILITY OF TRUSTEES/453. Liability of trust property.

453. Liability of trust property.

Charity property cannot be taken to indemnify a person injured by a breach of trust committed by the trustees of the charity¹.

¹ *Heriot's Hospital (Feoffees) v Ross* (1846) 12 Cl & Fin 507, HL (a Scottish case).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(6) EDUCATIONAL CHARITIES/(i) In general/454. Endowments for maintenance of voluntary schools.

(6) EDUCATIONAL CHARITIES

(i) In general

454. Endowments for maintenance of voluntary schools.

Where the trust deed¹ of a voluntary school requires that the income of any endowment is to be applied towards the maintenance of a school which a local education authority is required to maintain as a voluntary school, any such income must not be paid to the local education authority but must be applied by the governors of the school towards the discharge of their obligations, if any², with respect to the maintenance of the school, or in such other manner, if any, as may be determined by a scheme³ for the administration of the endowment⁴.

1 'Trust deed' means, in relation to any voluntary school, any instrument, other than an instrument of government, regulating the constitution of the school's governing body or the maintenance, management or conduct of the school: Education Act 1996 s 579(1) (definition added by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 183(a)(iv); and applied by s 142(8)). As to voluntary schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 104.

2 In the case of a controlled school, the governors have no obligations with respect to the maintenance of the school. The governors of aided and special agreement schools are responsible for the expenses referred to in the School Standards and Framework Act 1998 s 22, Sch 3 para 3: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 308. As to controlled schools and aided and special agreement schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 102.

3 I.e. a scheme made by the Charity Commission. As to the Charity Commission see PARAS 538-572.

4 See the School Standards and Framework Act 1998 Sch 3 para 11; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 305.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(6) EDUCATIONAL CHARITIES/(i) In general/455. Power of local education authorities to accept gifts for educational purposes.

455. Power of local education authorities to accept gifts for educational purposes.

A local education authority is empowered to accept, hold and administer any property on trust for purposes connected with education¹. Any intention on the part of the authority that a school should be vested in the authority as trustees is treated² as an intention to establish a new community school³, community special school⁴ or maintained nursery school⁵ and proposals for that purpose must be published in accordance with the appropriate statutory provisions⁶.

1 See the Education Act 1996 s 529(1); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1432. As to the application of an endowment of an existing school transferred to the local education authority see *Re Poplar and Blackwall Free School* (1878) 8 ChD 543.

2 I.e. in England treated for the purposes of the Education and Inspections Act 2006 ss 7, 10, 11, and in Wales treated for the purposes of the School Standards and Framework Act 1998 ss 28, 31: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 132.

3 As to community schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 103.

4 As to community special schools see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1027 et seq.

5 As to maintained nursery schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 85 et seq.

6 See the Education Act 1996 s 529(1A), (2); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1432. Such proposals are published in England in accordance with the Education and Inspections Act 2006 ss 7, 10, 11, Sch 2 and, in Wales, in accordance with the School Standards and Framework Act 1998 ss 28, 31, Sch 6: see the Education Act 1996 s 529(2). Any school which, in accordance with the Education Act 1996 s 529(1A) or (2) is vested in a local education authority as trustees, is a community school, a community special school or a maintained nursery school: see s 529(3).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(6) EDUCATIONAL CHARITIES/(i) In general/456. Extent of local authority's powers relating to charitable purposes.

456. Extent of local authority's powers relating to charitable purposes.

It is the duty of the local education authority to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education and secondary education are available to meet the needs of the population of its area, so far as its powers extend¹. This duty does not extend to matters in respect of which the Learning and Skills Council for England², the National Assembly for Wales³, or the higher education funding councils⁴ have a duty⁵. A local education authority has no locus standi to institute legal proceedings for the construction of a will purporting to create a charitable trust⁶. However, a local authority which is not a local education authority may help with education matters by establishing a trust fund to provide free or assisted places at independent schools⁷.

1 See the Education Act 1996 s 13(1); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 21.

2 As to the Learning and Skills Council for England see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1090.

3 *Ie* under the Learning and Skills Act 2000 Pt 2.

4 *Ie* established under the Further and Higher Education Act 1992 s 62: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 733.

5 See the Education Act 1996 s 13(2); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 21.

6 *Re Belling, Enfield London Borough Council v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105.

7 *Manchester City Council v Greater Manchester Metropolitan County Council* (1980) 78 LGR 560, HL. As to independent schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 465 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(6) EDUCATIONAL CHARITIES/(ii) Trusts/457. Powers as to educational trusts.

(ii) Trusts

457. Powers as to educational trusts.

The Secretary of State or, in relation to Wales, the Welsh Ministers may by order make such modifications of any trust deed¹ or other instrument relating to²: (1) a school which is or is to

become a foundation, voluntary or foundation special school³; or (2) property held on trust for the purposes of such a school⁴. Such an order may be made so as to have permanent effect or to have effect for such period as is specified in the order⁵. However, before making such an order the Secretary of State or, in relation to Wales, the Welsh Ministers, must consult: (a) the governing body of the school in question; (b) any trustees holding property on trust for the purposes of the school; (c) in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority⁶; and (d) such other persons as he considers appropriate⁷.

The Secretary of State or, in relation to Wales, the Welsh Ministers may by order make such modifications of any trust deed or other instrument relating to or regulating any institution that provides or is concerned in the provision of educational services, or is concerned in educational research, as, after consultation with the persons responsible for the management of the institution, appear to him to be requisite to enable them to fulfil any condition or meet any requirement imposed by regulations⁸. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order⁹.

1 As to the meaning of 'trust deed' see PARA 454 note 1.

2 See the School Standards and Framework Act 1998 s 82(1); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117.

3 See the School Standards and Framework Act 1998 s 82(1)(a); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117. As to foundation, voluntary and foundation special schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 104.

4 See the School Standards and Framework Act 1998 s 82(1)(b); ; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117.

5 See the School Standards and Framework Act 1998 s 82(3); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117.

6 As to the appropriate diocesan authority for a Church of England, Church in Wales or Roman Catholic Church school see **EDUCATION** vol 15(1) (2006 Reissue) PARA 42.

7 See the School Standards and Framework Act 1998 s 82(2); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117. Where any scheme for the regulation of endowed charities includes any provision for the benefit of children who are or have been scholars in a county or voluntary school, an army school is deemed to be a county or voluntary school within the meaning of those provisions: see the Army Schools Act 1891 s 1(1); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117. An army school is a school established for the purpose of affording education to children of non-commissioned officers and men of Her Majesty's regular land forces and conducted under the authority of a Secretary of State: see the Army Schools Act 1891 s 1(2); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117. As to voluntary schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 104.

8 Education Act 1996 s 489(3). As to the regulations made under s 485 (grants in aid of educational services or research) see **EDUCATION** vol 15(1) (2006 Reissue) PARA 69.

9 Education Act 1996 s 489(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(6) EDUCATIONAL CHARITIES/(ii) Trusts/458. Powers as to trusts for religious education.

458. Powers as to trusts for religious education.

Where in relation to any time before the appointed day¹, the premises of a voluntary or grant-maintained school² have ceased to be used for such a school³, or in relation to any time on or after the appointed day⁴: (1) the premises of a foundation or voluntary school⁵ have ceased to

be used for such a school⁶; or (2) in the opinion of the Secretary of State or, in relation to Wales, the Welsh Ministers⁷ it is likely such premises will cease to be so used⁸, he or they may by order⁹ made by statutory instrument make new provision as to the use of any endowment¹⁰ if it is shown¹¹ either¹²: (a) that the endowment is or has been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religion or religious denomination¹³; or (b) that the endowment is or has been used wholly or partly for or in connection with the provision at the school of such religious education and that the following requirements are fulfilled¹⁴, namely (i) that the school was or has been maintained as a voluntary or grant-maintained school¹⁵ or as a foundation or voluntary school¹⁶ since 1 April 1945¹⁷; and (ii) that religious education in accordance with the tenets of the religion or denomination concerned is, and from that date has been, provided at the school or, where the premises have ceased to be used for the purposes of the school, was provided at the school from that date until immediately before the premises ceased to be so used¹⁸.

Such an order by the Secretary of State or, in relation to Wales, the Welsh Ministers may require or authorise the disposal by sale or otherwise of any land or other property forming part of an endowment affected by the order, including the premises of the school and any teacher's dwelling-house, and may also consolidate any endowments to be dealt with by the scheme¹⁹. Subject to this and to any statutory provisions affecting the endowments, the order must establish and give effect, with a view to enabling the denomination concerned to participate more effectively in the administration of the statutory system of public education, to a scheme or schemes²⁰ for the endowments dealt with by the order to be used²¹ for appropriate educational purposes²². The order may include any necessary or expedient incidental or supplementary provisions²³.

1 The appointed day is 1 September 1999: School Standards and Framework Act 1998 s 20(7); School Standards and Framework Act 1998 (Appointed Day) Order 1998, SI 1998/2083, art 2.

2 As to voluntary schools and grant-maintained schools see **EDUCATION** vol 15(1) (2006 Reissue) PARAS 104, 106.

3 Education Act 1996 s 554(1)(a) (s 554(1) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 168(2)).

4 Education Act 1996 s 554(1)(b) (as substituted: see note 3).

5 le within the meaning of the School Standards and Framework Act 1998: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 104. As to foundation schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 104.

6 Education Act 1996 s 554(1)(b)(i) (as substituted: see note 3).

7 As to the Secretary of State and the Welsh Ministers see PARA 579.

8 Education Act 1996 s 554(1)(b)(ii) (as substituted: see note 3).

9 The order may be made only on the application of the persons appearing to the Secretary of State or, in relation to Wales, the Welsh Ministers to be the appropriate authority of the denomination concerned: Education Act 1996 s 555(1). The Secretary of State or, in relation to Wales, the Welsh Ministers must, not less than one month before making the order give notice of the proposed order and of the right of persons interested to make representations on it: s 555(2). The order must take into account any representations that may be made to the Secretary of State or, in relation to Wales, the Welsh Ministers by any person interested in it before the order is made: s 555(4). The notice must be given: (1) by giving to any persons appearing to the Secretary of State or, in relation to Wales, the Welsh Ministers to be trustees of an endowment affected by the proposed order a notice of the proposal to make it, together with a draft or summary of the provisions proposed to be included; and (2) by publishing, in such manner as the Secretary of State, or in relation to Wales, the Welsh Ministers think sufficient for informing any other persons interested, a notice of the proposal to make the order and of the place where any person interested may, during a period of not less than a month, inspect such a draft or summary, and by keeping a draft or summary available for inspection in accordance with the notice: s 555(3).

10 'Endowment' includes property not subject to any restriction on the expenditure of capital: Education Act 1996 s 554(5). As to the extension to army schools of certain provisions relating to endowments see **EDUCATION** vol 15(1) (2006 Reissue) PARA 117.

11 'Shown' means shown to the satisfaction of the Secretary of State: Education Act 1996 s 554(5).

12 Education Act 1996 s 554(2), which is expressed to be subject to s 555 (see note 9), s 556(1), (2) (see the text and notes 19-22).

13 Education Act 1996 s 554(2)(a).

14 Education Act 1996 s 554(2)(b), which is expressed to be subject to s 554(4) (see the text and note 18).

15 Ie within the meaning of the Education Act 1996: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 102.

16 Ie within the meaning of the School Standards and Framework Act 1998: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 104.

17 Education Act 1996 s 554(3)(a) (substituted by the School Standards and Framework Act 1998 Sch 30 para 168(3)(a)). The text refers to the date on which the Education Act 1944 Pt II (ss 6-69) (now repealed) came into force.

18 Education Act 1996 s 554(3)(b). 'Used' in this context means used in pursuance of ss 377, 378, 380, 381 (all repealed) (or any corresponding earlier enactment), or the School Standards and Framework Act 1998 Sch 19 para 3 or 4 (see **EDUCATION** vol 15(2) (2006 Reissue) PARAS 953-954): Education Act 1996 s 554(3)(b) (amended by the School Standards and Framework Act 1998 Sch 30 para 168(3)(b)). Where religious education in accordance with such tenets is shown to have been given to any pupils at: (1) a controlled school (within the meaning of the Education Act 1996); (2) a grant-maintained school (within the meaning of the Education Act 1996) which was a controlled school immediately before it became a grant-maintained school; or (3) a foundation or voluntary controlled school with a religious character (within the meaning of the School Standards and Framework Act 1998 Pt II (ss 22-83)), the religious education is taken to have been given to them at the request of their parents, unless the contrary is shown: Education Act 1996 s 554(4)(b) (substituted by the School Standards and Framework Act 1998 Sch 30 para 168(4)). As to controlled schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 102.

As to the adoption of uniform statutory trusts as the trusts on which endowments regulated by an order under the Education Act 1996 s 554 are to be held see s 557, Sch 36; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1436.

19 Education Act 1996 s 556(1).

20 Such a scheme may provide for the retention of the capital of any endowment and the application of the accruing income, or may authorise the application or expenditure of capital to such extent and on such conditions as may be determined under the scheme: see Education Act 1996 s 556(4).

21 Ie either in connection with schools which are foundation schools or voluntary schools or partly in connection with such schools (or either description of such schools) and partly in other ways related to the locality served by the school at the premises referred to in s 554(1) (see the text and notes 1-8): s 556(2) (amended by the School Standards and Framework Act 1998 Sch 30 para 169(a), (b)).

22 Education Act 1996 s 556(2). 'Use for appropriate educational purposes' means use for educational purposes in connection with the provision of religious education in accordance with the tenets of the religion or denomination concerned (including use for any purpose specified in Sch 36 (uniform statutory trusts for educational endowments): see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1436): s 556(3).

23 Education Act 1996 s 556(6). Thus it may provide for the appointment and powers of trustees and for vesting property in trustees: see s 556(6).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/8. CONDUCT AND ADMINISTRATION OF CHARITABLE TRUSTS/(6) EDUCATIONAL CHARITIES/(ii) Trusts/459. Sex discrimination: application by trustees to remove or modify restriction.

459. Sex discrimination: application by trustees to remove or modify restriction.

Where a trust deed or other instrument concerns property available for or in connection with the provision of education in certain establishments¹ and in any way restricts the benefits available under the instrument to persons of one sex², the trustees or the responsible body³ may apply to the Secretary of State or, in relation to Wales, the Welsh Ministers⁴ for the removal or modification of the restriction⁵. If, on such an application, the Secretary of State or, in relation to Wales, the Welsh Ministers, is satisfied that the removal or modification of the restriction would conduce to the advancement of education without sex discrimination, he or they may by order make such modifications of the instrument as appear expedient for removing or modifying the restriction, and for any supplemental or incidental purposes⁶. If the trust was created by gift or bequest, no such order may be made until 25 years after the date on which the gift or bequest took effect, unless the donor or his personal representatives, or the personal representatives of the testator, have consented in writing to the making of the application for the order⁷.

The Secretary of State or, in relation to Wales, the Welsh Ministers, must require the applicant to publish a notice containing particulars of the proposed order and stating that representations may be made to the Secretary of State or the Welsh Ministers within a period specified in the notice⁸. That period must be not less than one month from the date of the notice⁹. The applicant must publish the notice in such manner as may be specified by the Secretary of State, and the cost of any publication of the notice may be defrayed out of the property of the trust¹⁰. Before making the order the Secretary of State or, in relation to Wales, the Welsh Ministers must take into account any representations duly made in accordance with the notice¹¹.

1 Sex Discrimination Act 1975 s 78(1)(a). The establishments mentioned in the text are any of the following establishments: (1) an educational establishment maintained by a local education authority; (2) an independent school not being a special school; (3) a special school not maintained by a local education authority; (4) an institution within the further education sector (within the meaning of the Further and Higher Education Act 1992 s 91(3)); (5) a university; (6) an institution, other than a university, within the higher education sector (within the meaning of the Further and Higher Education Act 1992 s 91(5)); (7) an establishment (not falling within heads (1)-(6)) providing full-time or part-time education, being an establishment designated under the Sex Discrimination Act 1975 s 24(1): ss 78(1)(a), 22 Table (amended by the Education Act 1980 s 1(3), Sch 1 para 27; the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt II paras 75, 76; and the School Standards and Framework Act 1998 s 140(3), Sch 31). See further **EDUCATION** vol 15(1) (2006 Reissue) PARA 6.

2 Sex Discrimination Act 1975 s 78(1)(b).

3 The 'responsible body' in respect of the establishments specified in note 1 is, respectively: (1) the local education authority or governors, according to which of them has the function in question; (2) the proprietor; (3) the proprietor; (4) the governing body; (5) the governing body; (6) the governing body; (7) the governing body: Sex Discrimination Act 1975 s 22 Table (as amended: see note 1).

4 As to the Secretary of State and the Welsh Ministers see PARA 579.

5 Sex Discrimination Act 1975 s 78(2)

6 Sex Discrimination Act 1975 s 78(2).

7 Sex Discrimination Act 1975 s 78(3).

8 Sex Discrimination Act 1975 s 78(4).

9 Sex Discrimination Act 1975 s 78(5).

10 Sex Discrimination Act 1975 s 78(6).

11 Sex Discrimination Act 1975 s 78(7).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(1) INTRODUCTION/460. Statutory control of charitable fund raising.

9. CONTROL OF CHARITABLE FUND RAISING

(1) INTRODUCTION

460. Statutory control of charitable fund raising.

Fund raising for charities is subject to various statutory controls. The House to House Collections Act 1939, which provides for the regulation of house to house collection for charitable purposes, is prospectively repealed¹. The regime introduced by the Charities Act 1992 deals with control of fund raising for charitable institutions². The 1992 Act also provided for public charitable collections³, being charitable appeals made in any public place or by means of visits from house to house⁴, but the relevant provisions were never brought into force and have since been repealed⁵. The Charities Act 2006 provides a new regime for public charitable collections⁶, but the relevant provisions are, except for limited purposes⁷, not yet in force⁸.

1 The House to House Collections Act 1939 is repealed by the Charities Act 1992 s 78(2), Sch 7 as from a day to be appointed under s 79(2). At the date at which this volume states the law no such day had been appointed. As to the House to House Collections Act 1939 see PARAS 461-471. Certain functions under the House to House Collections Act 1939 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

2 See the Charities Act 1992 Pt II (ss 58-64A); and PARAS 473-490.

3 See the Charities Act 1992 Pt III (ss 65-74) (repealed).

4 See the Charities Act 1992 s 65(1)(a) (repealed).

5 Charities Act 2006 s 75(2), Sch 9 para 1.

6 See the Charities Act 2006 Pt 3 Ch 1 (ss 45-66); and PARAS 491-507.

7 See PARA 491 notes 2, 10.

8 The Charities Act 2006 Pt 3 Ch 1 is to be brought into force by order made by the Minister under s 79(2) as from a day to be appointed. At the date at which this volume states the law only certain provisions were in force. As to the Minister see PARA 580.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(2) HOUSE TO HOUSE COLLECTIONS, WAR CHARITIES AND CHARITIES FOR THE DISABLED/461. Promoter must be licensed.

(2) HOUSE TO HOUSE COLLECTIONS, WAR CHARITIES AND CHARITIES FOR THE DISABLED

461. Promoter must be licensed.

It is generally necessary to have a licence¹ to promote² a house to house collection for any charitable purpose³. If a person promotes a collection for a charitable purpose, and a collection for that purpose is made in any locality pursuant to his promotion, then, unless there is in

force, throughout the period during which the collection is made in that locality, a licence authorising him, or authorising another under whose authority he acts, to promote a collection in that locality for that purpose, he is guilty of an offence⁴. A collector who acts in any locality for the purposes of a collection for a charitable purpose without there being in force, at all times when he so acts, a licence authorising a promoter under whose authority he acts, or authorising the collector himself, to promote a collection in that locality for that purpose is guilty of an offence⁵.

1 'Licence' means a licence under the House to House Collections Act 1939: s 11(1) (prospectively repealed: see PARA 460).

2 'Promoter' means, in relation to a collection, a person who causes others to act, whether for remuneration or otherwise, as collectors for the purposes of the collection; and 'promote' and 'promotion' have corresponding meanings: House to House Collections Act 1939 s 11(1) (prospectively repealed: see PARA 460). 'Collection' means an appeal to the public, made by means of visits from house to house, to give, whether for consideration or not, money or other property; and 'collector' means, in relation to a collection, a person who makes the appeal in the course of such visits as aforesaid: s 11(1) (prospectively repealed: see PARA 460). See also *Carasu Ltd v Smith* [1968] 2 QB 383, [1968] 2 All ER 529, DC ('collection' included a case where a person is induced to purchase an article on the representation that part of the proceeds will go to charity); followed in *Cooper v Coles* [1987] QB 230, [1987] 1 All ER 91, DC, where the view of Forbes J in *Murphy v Duke* [1985] QB 905, [1985] 2 All ER 274 that the earlier decision was made per incuriam was said to be wrong.

'House' includes place of business: House to House Collections Act 1939 s 11(1) (prospectively repealed: see PARA 460). A public house has been held to be a place of business within the House to House Collections Act 1939: see *Report of the Charity Commissioners for England and Wales for 1986* (HC Paper (1986-87) no 306) para 66.

3 See the House to House Collections Act 1939 s 1(1) (prospectively repealed: see PARA 460). 'Charitable purpose' means any charitable, benevolent or philanthropic purpose, whether or not charitable within the meaning of any rule of law: s 11(1) (prospectively repealed: see PARA 460). A collection is deemed to be made for a particular purpose where the appeal is made in association with a representation that the money or other property appealed for, or part of it, will be applied for that purpose: s 11(2) (prospectively repealed: see PARA 460). The Act did not apply to house to house collections made by a registered pool promoter who held a licence under the Pool Competitions Act 1971 permitting house to house collection of entry money etc: s 3(5). However, the Pool Competitions Act 1971 expired on 26 July 1987 (the date to which it was continued in force by the Pool Competitions Act 1971 (Continuance) Order 1986, SI 1986/1234 (spent)). At the date at which this volume states the law no subsequent order has been made continuing it in force.

4 House to House Collections Act 1939 s 1(2) (prospectively repealed: see PARA 460). See also *Carasu Ltd v Smith* [1968] 2 QB 383, [1968] 2 All ER 529, DC. Any promoter guilty of such an offence is liable on summary conviction to a penalty not exceeding six months' imprisonment or a fine not exceeding level 3 on the standard scale or both such imprisonment and such fine: House to House Collections Act 1939 s 8(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. As to the standard scale see PARA 308.

5 House to House Collections Act 1939 s 1(3) (prospectively repealed: see PARA 460). See also *Carasu Ltd v Smith* [1968] 2 QB 383, [1968] 2 All ER 529, DC. Any collector guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale or to imprisonment for a term currently not exceeding three months and, from a day to be appointed, not exceeding three months, or to both such imprisonment and such fine: House to House Collections Act 1939 s 8(2) (amended by virtue of the Criminal Justice Act 1982 ss 35, 46). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. As from a day to be appointed the maximum term of imprisonment is 51 weeks: see the House to House Collections Act 1939 s 8(2) (prospectively amended by the Criminal Justice Act 2003 Sch 26 para 10). At the date at which this volume states the law no such day had been appointed. It must be proved that the person charged went from house to house or was about to do so when found collecting in one house: *Hankinson v Dowland* [1974] 3 All ER 655, [1974] 1 WLR 1327.

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462. Local exemption certificate.

If the chief officer of police for the police area¹ comprising a locality in which a collection² for a charitable purpose³ is being or is proposed to be made is satisfied that the purpose is local in character and that the collection is likely to be completed within a short period of time, he may grant to the person appearing to be principally concerned in the promotion⁴ a certificate in the prescribed⁵ form exempting the grantee, or any person authorised by him to act as promoter⁶ or collector⁷ in relation to that collection, from the provisions of the House to House Collections Act 1939 (other than those relating to the unauthorised use of badges⁸ and the requirement of collectors' names⁹), within the locality and for the period specified in the certificate¹⁰, and from the provisions of regulations made under the Act within the same locality and period¹¹.

1 As to chief officers of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq. As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARAS 136-138. The functions conferred on a chief officer of police by the House to House Collections Act 1939 or any regulations made under it may be delegated by him to any officer not below the rank of inspector: s 7(2) (prospectively repealed: see PARA 460). The functions which may be so delegated do not include any functions conferred on the Metropolitan Police Commissioner by virtue of his being a licensing authority within the meaning of s 2 (see PARA 464): s 9(2) (amended by the Local Government Act 1972 s 251(2), Sch 29 para 23(5)). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. As to the Metropolitan Police Commissioner see **POLICE** vol 36(1) (2007 Reissue) PARA 183 et seq.

2 As to the meaning of 'collection' see PARA 461 note 2.

3 As to the meaning of 'charitable purposes' see PARA 461 note 3.

4 As to the meaning of 'promotion' see PARA 461 note 2.

5 'Prescribed' means prescribed by regulations made under the House to House Collections Act 1939: s 11(1) (prospectively repealed: see PARA 460). For the form of the certificate see the House to House Collections Regulations 1947, SR & O 1947/2662, reg 3(1), Sch 1.

6 As to the meaning of 'promoter' see PARA 461 note 2.

7 As to the meaning of 'collector' see PARA 461 note 2.

8 In the House to House Collections Act 1939 ss 5, 8(4): see PARA 466.

9 In the House to House Collections Act 1939 ss 6, 8(5): see PARA 467.

10 House to House Collections Act 1939 s 1(4) (prospectively repealed: see PARA 460).

11 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 3(2).

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463. Exemption of collections over wide areas.

Where the Minister¹ is satisfied that a person pursues a charitable purpose² throughout the whole or a substantial part of England and is desirous of promoting collections³ for that purpose, he may by order⁴, direct that that person is exempt from the necessity of having a licence⁵ as respects all collections for that purpose in the localities prescribed in the order⁶. Whilst the order is in force as respects collections in any locality, the House to House Collections Act 1939 has effect in relation to the person exempted, to a promoter⁷ of a collection in that locality for that purpose acting under the authority of the person exempted, and to a person who so acts as a collector⁸ for the purposes of any such collection, as if a

licence authorising the exempted person to promote⁹ a collection in that locality for that purpose were in force¹⁰.

1 As to the Minister see PARA 580.

2 As to the meaning of 'charitable purposes' see PARA 461 note 3.

3 As to the meaning of 'collection' see PARA 461 note 2.

4 At the date at which this volume states the law no such orders had been made. Any order made under the House to House Collections Act 1939 s 3 (prospectively repealed) may be revoked or varied by a subsequent order made by the Minister: s 3(2) (amended by SI 2006/2951; and prospectively repealed (see PARA 460)).

5 As to the meaning of 'licence' see PARA 461 note 1.

6 House to House Collections Act 1939 s 3(1) (amended by SI 2006/2951; and prospectively repealed (see PARA 460)). An application for an order must be made not later than the first day of the month preceding that in which it is proposed to commence the collection, but the licensing authority or, as the case may be, the Minister may grant an application made out of time if satisfied that there are special reasons for doing so: House to House Collections Regulations 1947, SR & O 1947/2662, reg 4(2) (modified by SI 1974/595; and amended by virtue of SI 2006/2951).

7 As to the meaning of 'promoter' see PARA 461 note 2.

8 As to the meaning of 'collector' see PARA 461 note 2.

9 As to the meaning of 'promote' see PARA 461 note 2.

10 House to House Collections Act 1939 s 3(1) (as amended (see note 6) and prospectively repealed: see PARA 460).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(2) HOUSE TO HOUSE COLLECTIONS, WAR CHARITIES AND CHARITIES FOR THE DISABLED/464. Grant or refusal of licences.

464. Grant or refusal of licences.

If a person promoting or proposing to promote¹ a collection² in any locality for a charitable purpose³ makes to the licensing authority⁴ for the area comprising that locality an application in the prescribed manner⁵ specifying the purpose of the collection and the locality, whether being the whole of the area of the authority or a part of it, within which the collection is to be made, and furnishes it with the prescribed information, the authority must, subject to the provisions following, grant him a licence⁶ to promote a collection within that locality for that purpose⁷. The licence is generally granted for such period, not being longer than 12 months, as is specified in the application, and remains in force for that period unless revoked⁸, provided that, if it appears to a licensing authority to be expedient to provide for the simultaneous expiration of licences to be granted by it in respect of collections which in its opinion are likely to be proposed to be made annually or continuously over a long period, it may, on the grant of such a licence, grant it for a period shorter or longer than that specified in the application, or for a period longer than 12 months (but not exceeding 18 months), as may be requisite for that purpose⁹.

The licensing authority may refuse or revoke the grant of a licence if it appears to it that¹⁰:

- 351 (1) the total amount likely to be applied for charitable purposes as a result of the collection, including any amount already so applied, is inadequate in proportion to the value of the proceeds¹¹ likely to be or already received¹²;

- 352 (2) remuneration which is excessive in relation to that total amount is likely to be, or has been, retained out of the proceeds of the collection by any person¹³;
- 353 (3) the grant of a licence would be likely to facilitate the commission of an offence of begging¹⁴, or that such an offence has been committed in connection with the collection¹⁵;
- 354 (4) the applicant or licensee is not a fit and proper person to hold a licence by reason of conviction in the United Kingdom of certain offences¹⁶, or conviction in any part of the Queen's dominions of any offence conviction for which necessarily involved a finding that he acted fraudulently or dishonestly, or of an offence of a kind the commission of which would be likely to be facilitated by the grant of a licence¹⁷;
- 355 (5) the applicant or licensee has failed, in promoting a licensed collection, to exercise due diligence to secure that persons authorised by him to act as collectors¹⁸ were fit and proper persons, to secure the compliance of persons so authorised with regulations under the House to House Collections Act 1939, or to prevent prescribed badges or certificates of authority¹⁹ being obtained by unauthorised persons²⁰; or
- 356 (6) the applicant or licensee has refused or neglected to furnish the authority with such information as it has reasonably required for informing itself as to matters specified in heads (1) to (5) above²¹.

If the authority refuses or revokes a licence, it must forthwith give written notice to the applicant or licensee stating the ground or grounds on which the licence has been refused or revoked and informing him of the right of appeal, and he may, within 14 days of the notice, appeal to the Minister, whose decision is final²². If the appeal is allowed, the authority must forthwith issue a licence or cancel the revocation, as the case may be²³.

1 As to the meaning of 'promote' see PARA 461 note 2.

2 As to the meaning of 'collection' see PARA 461 note 2.

3 As to the meaning of 'charitable purposes' see PARA 461 note 3.

4 The 'licensing authority' means: (1) in relation to the City of London, the Common Council of the City of London; (2) in relation to the metropolitan police district the Metropolitan Police Commissioner; and (3) in relation to a district exclusive of any part of it within the metropolitan police district, the district council: House to House Collections Act 1939 s 2(1A) (added by the Local Government Act 1972 s 251(2), Sch 29 para 23(2)). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. As to the delegation of functions of the Metropolitan Police Commissioner see PARA 462 note 1. As to the Common Council of the City of London see **LONDON GOVERNMENT**. As to the metropolitan police district see **POLICE** vol 36(1) (2007 Reissue) PARA 137. As to the Metropolitan Police Commissioner see **POLICE** vol 36(1) (2007 Reissue) PARA 183. As to district councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24.

5 As prescribed by regulations made under the House to House Collections Act 1939. An application for a licence must be in the form specified in the House to House Collections Regulations 1947, SR & O 1947/2662, reg 4(1), Sch 2, and must be made not later than the first day of the month preceding that in which it is proposed to commence the collection, but the licensing authority or, as the case may be, the Minister may grant an application made out of time if satisfied there are special reasons for doing so: reg 4(2) (modified by SI 1974/595; and amended by virtue of SI 2006/2951). As to the Minister see PARA 580.

6 As to the meaning of 'licence' see PARA 461 note 1.

7 House to House Collections Act 1939 s 2(1) (amended by the Local Government Act 1972 s 272, Sch 29 para 23(1), Sch 30). The House to House Collections Act 1939 is prospectively repealed: see PARA 460.

8 House to House Collections Act 1939 s 2(2) (prospectively repealed: see PARA 460).

9 House to House Collections Act 1939 s 2(2) proviso (amended by the Local Government Act 1972 Sch 29 para 23(3)). The House to House Collections Act 1939 is prospectively repealed: see PARA 460.

- 10 House to House Collections Act 1939 s 2(3) (amended by the Local Government Act 1972 Sch 29 para 23(3)). The House to House Collections Act 1939 is prospectively repealed: see PARA 460.
- 11 'Proceeds' means, in relation to a collection, all money and other property given, whether for consideration or not, in response to the appeal: House to House Collections Act 1939 s 11(1) (prospectively repealed: see PARA 460).
- 12 House to House Collections Act 1939 s 2(3)(a) (prospectively repealed: see PARA 460).
- 13 House to House Collections Act 1939 s 2(3)(b) (prospectively repealed: see PARA 460).
- 14 Is an offence under the Vagrancy Act 1824 s 3: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 833.
- 15 House to House Collections Act 1939 s 2(3)(c) (prospectively repealed: see PARA 460).
- 16 The offences are: (1) offences under the Offences Against the Person Act 1861 s 47 (assault occasioning bodily harm); (2) robbery, burglary and blackmail; (3) offences under the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (regulation of street collections): House to House Collections Act 1939 s 2(3)(d), Schedule (amended by the Theft Act 1968 s 33(2), Sch 2 Pt III). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 149; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 851; **POLICE** vol 36(1) (2007 Reissue) PARA 171.
- 17 House to House Collections Act 1939 s 2(3)(d) (prospectively repealed: see PARA 460).
- 18 As to the meaning of 'collector' see PARA 461 note 2.
- 19 As to badges and certificates of authority see PARA 466.
- 20 House to House Collections Act 1939 s 2(3)(e) (prospectively repealed: see PARA 460).
- 21 House to House Collections Act 1939 s 2(3)(f) (prospectively repealed: see PARA 460).
- 22 House to House Collections Act 1939 s 2(4), (5) (s 2(4) amended by the Local Government Act 1972 Sch 29 para 23(3); and SI 2006/2951). The House to House Collections Act 1939 is prospectively repealed: see PARA 460.
- 23 House to House Collections Act 1939 s 2(6) (amended by the Local Government Act 1972 Sch 29 para 23(3); and SI 2006/2951). The House to House Collections Act 1939 is prospectively repealed: see PARA 460.

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465. Conduct of collections; offences against regulations.

The Minister¹ may make regulations² for prescribing anything which by the House to House Collections Act 1939 is required to be prescribed³, and for regulating the manner in which collections⁴, in respect of which licences⁵ have been granted or orders have been made⁶, may be carried out and the conduct of promoters⁷ and collectors⁸ in relation to such collections⁹.

Such regulations may make provision for all or any of the following matters:

- 357 (1) for requiring and regulating the use by collectors, of prescribed badges and prescribed certificates of authority¹⁰, and the issue, custody, production and return thereof, and, in particular, for requiring collectors on demand by a police constable or by any occupant of a house visited to produce their certificates of authority¹¹;
- 358 (2) in the case of collections in respect of which licences have been granted, for requiring that the prescribed certificates of authority of the collectors must be authenticated in a manner approved by the chief officer of police¹² for the area in

respect of which the licence was granted, and that their prescribed badges must have inserted therein or annexed thereto in a manner and form so approved a general indication of the purpose of the collection¹³;

359 (3) for prohibiting persons below a prescribed age from acting, and others from causing them to act, as collectors¹⁴;

360 (4) for preventing annoyance to the occupants of houses visited by collectors¹⁵;

361 (5) for requiring the prescribed information with respect to the expenses, proceeds¹⁶ and application of the proceeds of collections to be furnished, in the case of collections in respect of which licences have been granted, by the person to whom the licence was granted to the authority by whom it was granted, and, in the case of collections in respect of which an order has been made, by the person thereby exempted¹⁷ to the Minister, and for requiring the information furnished to be vouched and authenticated in such manner as may be prescribed¹⁸.

Any person who contravenes or fails to comply with the provisions of a regulation made under the House to House Collections Act 1939 is guilty of an offence¹⁹.

Street collections for charities, as distinct from house to house collections, are governed by other statutory provisions and regulations²⁰.

1 As to the Minister see PARA 580.

2 See the House to House Collections Regulations 1947, SR & O 1947/2662 (amended by SI 1963/684; SI 1974/595).

3 Is required to be prescribed by regulations made under the House to House Collections Act 1939.

4 As to the meaning of 'collection' see PARA 461 note 2.

5 As to the meaning of 'licence' see PARA 461 note 1.

6 Is under the House to House Collections Act 1939 s 3: see PARA 463.

7 As to the meaning of 'promoter' see PARA 461 note 2.

8 As to the meaning of 'collector' see PARA 461 note 2.

9 House to House Collections Act 1939 s 4(1) (prospectively repealed: see PARA 460). Any regulations so made must be laid before Parliament as soon as may be after they are made, and if either House of Parliament, within the period of 40 days beginning with the date on which the regulations are laid before it, resolves that the regulations be annulled, the regulations thereupon become void, without prejudice, however, to anything previously done thereunder or to the making of new regulations: s 4(4) (prospectively repealed: see PARA 460). In reckoning any such period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 4(4) (prospectively repealed: see PARA 460).

10 As to badges and certificates of authority see PARA 466.

11 House to House Collections Act 1939 s 4(2)(a) (prospectively repealed: see PARA 460). See PARA 466.

12 As to chief officers of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

13 House to House Collections Act 1939 s 4(2)(b) (prospectively repealed: see PARA 460). See PARA 466.

14 House to House Collections Act 1939 s 4(2)(c) (prospectively repealed: see PARA 460). See PARA 467.

15 House to House Collections Act 1939 s 4(2)(d) (prospectively repealed: see PARA 460). See PARA 467.

16 As to the meaning of 'proceeds' see PARA 464 note 11.

17 Is exempted from the provisions of the House to House Collections Act 1939 s 1(2): see PARA 461.

18 House to House Collections Act 1939 s 4(2)(e) (amended by SI 2006/2951; and prospectively repealed (see PARA 460)). See PARA 468.

19 House to House Collections Act 1939 s 4(3) (prospectively repealed: see PARA 460). Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale: s 8(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. As to the standard scale see PARA 308

20 See the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (see **POLICE** vol 36(1) (2007 Reissue) PARA 171; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 851, 852); the Local Government (Miscellaneous Provisions) Act 1982 s 3, Sch 4; the London Local Authorities Act 1990 Pt III (ss 21-41); and regulations made thereunder. It was held in *Meaden v Wood* [1985] Crim LR 678, DC, that the Home Secretary had acted within his powers under the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 in setting up the system contained in the Street Collections (Metropolitan Police District) Regulations 1979, SI 1979/1230 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 851-852), by which the Metropolitan Police Commissioner was empowered to regulate persons wishing to make street collections. As to the Metropolitan Police Commissioner see **POLICE** vol 36(1) (2007 Reissue) PARA 183 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(2) HOUSE TO HOUSE COLLECTIONS, WAR CHARITIES AND CHARITIES FOR THE DISABLED/466. Badges and certificates of authority.

466. Badges and certificates of authority.

A promoter¹ of a house to house collection² must provide a collector³ with a prescribed certificate of authority⁴ and a prescribed badge⁵ and, if money is to be collected, a collecting box or receipt book⁶. He must also exercise all due diligence to secure that all certificates of authority and prescribed badges obtained for the purposes of a collection are destroyed when no longer required⁷.

A person who, in connection with any appeal⁸ made by him to the public in association with a representation that the appeal is for a charitable purpose⁹, displays or uses: (1) a prescribed badge or prescribed certificate of authority not being a badge or certificate for the time being held by him¹⁰ for the purposes of the appeal; or (2) any badge or device, or any certificate or other document so nearly resembling a prescribed badge or, as the case may be, a prescribed certificate of authority as to be calculated to deceive¹¹, is guilty of an offence¹².

1 As to the meaning of 'promoter' see PARA 461 note 2.

2 As to the meaning of 'collection' see PARA 461 note 2.

3 As to the meaning of 'collector' see PARA 461 note 2.

4 'Prescribed certificate of authority' means a certificate in the form set out in the House to House Collections Regulations 1947, SR & O 1947/2662, regs 2(1), 6, Sch 3: see reg 2(1). The House to House Collections Regulations 1947, SR & O 1947/2662, are made under the House to House Collections Act 1939 which is prospectively repealed: see PARA 460.

5 'Prescribed badge' means a badge in the form set out in the House to House Collections Regulations 1947, SR & O 1947/2662, Sch 4: see reg 2(1).

6 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 6(1). 'Collecting box' means a box or other receptacle for monetary contributions, securely closed and sealed in such a way that it cannot be opened without breaking the seal: reg 2(1). 'Receipt book' means a book of detachable forms of receipt consecutively numbered with counterfoils or duplicates correspondingly numbered: reg 2(1).

7 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 17.

8 An appeal is not limited to an appeal by way of house to house collections: *R v Davison* [1972] 3 All ER 1121, [1972] 1 WLR 1540, CA.

9 As to the meaning of 'charitable purposes' see PARA 461 note 3.

10 ie pursuant to the House to House Collections Regulations 1947, SR & O 1947/2662.

11 'Calculated to deceive' means likely to deceive: *R v Davison* [1972] 3 All ER 1121, [1972] 1 WLR 1540, CA. See also that case for the proper direction to be given to the jury.

12 House to House Collections Act 1939 s 5 (prospectively repealed: see PARA 460). Any person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale, or to both such imprisonment and such fine: s 8(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. As to the standard scale see PARA 308.

There is no power to grant exemptions from s 5 under s 1(4): see PARA 462.

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467. Collectors.

Promoters¹ must exercise due diligence to ensure that collectors² are fit and proper persons to act as such and to secure their compliance with the provisions of the regulations governing house to house collections³. No collector may importune any person to his annoyance, or remain in or at the door of any house if requested by the occupant to leave⁴. No person under the age of 16 years may act or be authorised to act as a collector of money⁵.

Collectors must sign the prescribed certificate of authority⁶ and prescribed badge⁷, produce the certificate on demand, wear the badge during collecting, and return both to the promoter when the collection is completed or on demand of the promoter⁸. A police constable may require any person whom he believes to be acting as a collector for the purpose of a collection⁹ for a charitable purpose¹⁰ to declare to him immediately his name and address and to sign his name¹¹. If any person fails to comply with such a requirement he is guilty of an offence¹².

A collector collecting money by a means of a collecting box¹³ may receive it only by permitting the person from whom it is received to place it in the box, and when he is collecting money by other means he must give a signed receipt¹⁴. Collectors are trustees of the funds they collect¹⁵. Collecting boxes, with seals unbroken, and receipt books¹⁶, together with the total sum of money which is entered in them, must be returned to the promoter when the collecting box is full or the receipt book is exhausted, upon the demand of the promoter, when the collector does not desire to act as a collector or upon completion of the collection¹⁷.

1 As to the meaning of 'promoter' see PARA 461 note 2.

2 As to the meaning of 'collector' see PARA 461 note 2.

3 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 5. The House to House Collections Regulations 1947, SR & O 1947/2662, which govern house to house collections, are made under the House to House Collections Act 1939 which is prospectively repealed: see PARA 460.

4 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 9.

5 House to House Collections Regulations 1947, SR & O 1947/2662, reg 8 (substituted by SI 1963/684).

6 As to the meaning of 'prescribed certificate of authority' see PARA 466 note 4.

7 As to the meaning of 'prescribed badge' see PARA 466 note 5.

8 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 7. As to badges and certificates see PARA 466.

9 As to the meaning of 'collection' see PARA 461 note 2.

10 As to the meaning of 'charitable purposes' see PARA 461 note 3.

11 House to House Collections Act 1939 s 6 (prospectively repealed: see PARA 460).

12 House to House Collections Act 1939 s 6 (prospectively repealed: see PARA 460). Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale: s 8(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The House to House Collections Act 1939 is prospectively repealed see PARA 460. As to the standard scale see PARA 308.

There is no power to grant exemptions from s 6 under s 1(4): see PARA 462.

13 As to the meaning of 'collecting box' see PARA 466 note 6.

14 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 10. Where a promoter has been granted an order of exemption (see PARA 463) he may, with the Minister's permission, arrange an envelope collection: see reg 13 (amended by virtue of SI 2006/2951). As to the Minister see PARA 580.

15 *Jones v A-G* (1976) Times, 10 November.

16 As to the meaning of 'receipt book' see PARA 466 note 6.

17 See House to House Collections Regulations 1947, SR & O 1947/2662, reg 11. Collecting boxes must be opened in the presence of the promoter and another responsible person, or by an official of a bank: reg 12(1), (2). Receipt books and sums received with them must be examined by the promoter and another responsible person: reg 12(4). In each case the amount collected must be listed with the distinguishing number of the box or book: reg 12(3), (4).

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468. Accounts.

An account of the collections¹ for which a licence² has been granted must be furnished by the chief promoter³ to the authority⁴ granting the licence within one month of the expiry of the licence⁵, and where an order of exemption⁶ has been made an account must be made annually to the Minister⁷. The time for furnishing the account may in either case be extended⁸. In appropriate cases the account for the house to house collections may be combined with that required⁹ for street collections¹⁰. The account must be in the prescribed form, duly certified and vouched¹¹.

1 As to the meaning of 'collection' see PARA 461 note 2.

2 As to the meaning of 'licence' see PARA 461 note 1.

3 'Chief promoter', in relation to a collection, means a person to whom a licence has been granted authorising him to promote that collection or in respect of whom an order has been made directing that he is exempt from the provisions of the House to House Collections Act 1939 s 1(2) (see PARA 461) as respects that collection: House to House Collections Regulations 1947, SR & O 1947/2662, reg 2(1). As to the meaning of 'promoter' see PARA 461 note 2. The House to House Collections Regulations 1947, SR & O 1947/2662, are made under the House to House Collections Act 1939 which is prospectively repealed: see PARA 460.

4 As to licensing authorities see PARA 464 note 4.

5 As to the duration of a licence see PARA 464.

6 lie under the House to House Collections Act 1939 s 3: see PARA 463.

7 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 14(1), (2) (amended by SI 1974/595; and amended by virtue of SI 2006/2951). As to the Minister see PARA 580.

8 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 14(3) (amended by SI 1974/595).

9 lie under the Police, Factories, etc (Miscellaneous Provisions) Act 1916: see PARA 465 note 20.

10 See the House to House Collections Regulations 1947, SR & O 1947/2662, reg 14(4) (amended by SI 1974/595).

11 See the House to House Collections Regulations 1947, SR & O 1947/2662, regs 15, 16, Schs 5-7.

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469. False statements.

A person who, in furnishing any information for the purposes of the House to House Collections Act 1939, knowingly or recklessly makes a statement false in a material particular is guilty of an offence¹.

1 House to House Collections Act 1939 s 8(6) (prospectively repealed: see PARA 460). Any person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale, or to both such imprisonment and such fine: s 8(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The House to House Collections Act 1939 is prospectively repealed: see PARA 460. As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(2) HOUSE TO HOUSE COLLECTIONS, WAR CHARITIES AND CHARITIES FOR THE DISABLED/470. Offences by corporations.

470. Offences by corporations.

Where an offence under the House to House Collections Act 1939 committed by a corporation is proved to have been committed with the consent and connivance of, or to be attributable to any culpable neglect of duty on the part of, any director, manager, secretary or other officer of the corporation, he, as well as the corporation, is deemed to be guilty of an offence and is liable to be proceeded against and punished accordingly¹.

1 House to House Collections Act 1939 s 8(7) (prospectively repealed: see PARA 460).

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471. War charities and charities for the disabled.

The War Charities Act 1940, which had been extended to cover the disabled¹, was repealed by the Charities Act 1992², which contains new and different provisions designed to deal with the same problems and is considered elsewhere in this title³.

1 Repealed by the National Assistance Act 1948 s 41 (repealed).

2 Repealed by the Charities Act 1992 s 78(2), Sch 7.

3 As to the control of charitable fund raising under the Charities Act 1992 Pt II (ss 58-64A) see PARAS 473-490. As to public charitable collections under the Charities Act 2006 Pt 3 Ch 1 (ss 45-66) see PARAS 491-507. Pt 3 Ch 1 is in force only for limited purposes. At the date this volume states the law no day had been appointed bringing Pt 3 Ch 1 into force for any remaining purposes.

As to the statutory regulation of street collections and street trading see the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (see **POLICE** vol 36(1) (2007 Reissue) PARA 171; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 851, 852); the Local Government (Miscellaneous Provisions) Act 1982 s 3, Sch 4; and the London Local Authorities Act 1990 Pt III (ss 21-41).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(3) TRADING REPRESENTATIONS/472. Trading representations.

(3) TRADING REPRESENTATIONS

472. Trading representations.

The Consumer Protection from Unfair Trading Regulations 2008¹ prohibits unfair commercial practices² and the promotion of unfair commercial practices by persons responsible for codes of conduct for traders³, and provides for a range of connected offences⁴. 'Commercial practice' means any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader⁵, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction, if any, in relation to a product⁶. A commercial practice is unfair if: (1) it contravenes the requirements of professional diligence and it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product⁷; or (2) it is a misleading action⁸, a misleading omission⁹, aggressive¹⁰, or a specified unfair commercial practice¹¹. A charity is not exempt from these provisions.

1 Repealed by the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, which implements EC Parliament and Council Directive 2005/29 (OJ L149, 11.6.2005, p 22) concerning unfair business-to-consumer commercial practices. See **SALE OF GOODS AND SUPPLY OF SERVICES**.

2 Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, reg 3(1).

3 See the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, reg 4.

4 See the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, regs 8-12. A person guilty of an offence under these provisions is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 13. As to the statutory maximum see PARA 308. There are defences of due diligence and of the innocent publication of an advertisement: see regs 17, 18.

5 'Trader' means any person who in relation to a commercial practice is acting for purposes relating to his business, and anyone acting in the name of or on behalf of a trader: Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, reg 2(1).

6 Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, reg 2(1).

7 Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, reg 3(2), (3).

- 8 See the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, regs 3(2), (4), 5.
- 9 See the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, regs 3(2), (4), 6.
- 10 See the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, regs 3(2), (4), 7.
- 11 See the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, regs 3(2), (4), Sch 1.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/473. Charitable institutions; professional fund raisers; commercial participators.

(4) CONTROLS UNDER THE

473. Charitable institutions; professional fund raisers; commercial participators.

The provisions of the Charities Act 1992 which deal with the control of fund raising extend beyond charities within the meaning of the Charities Act 1993¹. They apply to any 'charitable institution', which is defined as a charity or an institution², other than a charity, which is established for charitable, benevolent or philanthropic purposes³. The main controls are on professional fund raisers and commercial participators.

A professional fund raiser is: (1) any person, apart from a charitable institution or a company⁴ connected with such an institution⁵, who carries on a fund raising business⁶; or (2) any other person who for reward solicits⁷ money or other property for the benefit of a charitable institution, if he does so otherwise than in the course of any fund raising venture undertaken by a person falling within head (1) above⁸. There are important exceptions to this definition. Head (2) above does not apply to any of the following:

- 362 (a) any charitable institution or any company connected with any such institution⁹;
- 363 (b) any officer or employee of any such institution or company, or any trustee of any such institution, acting (in each case) in his capacity as such¹⁰;
- 364 (c) any person acting as a collector¹¹ in respect of a public charitable collection¹²;
- 365 (d) any person who in the course of a relevant programme, that is to say a radio or television programme in the course of which a fund-raising venture is undertaken by a charitable institution, or a company connected with such an institution, makes any solicitation at the instance of that institution or company¹³;
or
- 366 (e) any commercial participator¹⁴.

Nor does head (2) apply to a person if he does not receive: (i) more than £10 per day, or £1,000 per year, by way of remuneration in connection with soliciting money or other property for the benefit of the charitable institution¹⁵; or (ii) more than £1,000 by way of remuneration in connection with any fund-raising venture in the course of which he solicits money or other property for the benefit of that institution¹⁶.

'Commercial participator', in relation to any charitable institution, means any person (apart from a company connected with the institution) who carries on for gain a business other than a fund raising business, but in the course of that business, engages in any promotional venture¹⁷ in the course of which it is represented that charitable contributions¹⁸ are to be given to or applied for the benefit of the institution¹⁹.

- 1 See the Charities Act 1992 s 58(1) (see notes 2-8); and PARA 1. As to fund raising for charitable purposes otherwise than by professional fund raisers or commercial participators see the Charities Act 1992 s 64(2)(e); the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, regs 7, 8; and PARAS 488, 490.
- 2 'Institution' includes any trust or undertaking: Charities Act 1992 s 58(1). As to the meaning of 'charity' see PARA 1; definition applied by s 58(1) (definition amended by the Charities Act 1993 s 98(1), Sch 6 para 29(1), (5)). 'Charitable purposes', where the term occurs in the context of a reference to charitable, benevolent or philanthropic purposes, is a reference to charitable purposes as defined by the Charities Act 2006 s 2(1): Charities Act 1992 s 58(4) (amended by the Charities Act 2006 s 75(1), Sch 8 para 90(1), (4)).
- 3 Charities Act 1992 s 58(1).
- 4 As to the meaning of 'company' see PARA 227; definition applied by the Charities Act 1992 s 58(1) (definition amended by the Charities Act 1993 Sch 6 para 29(5)).
- 5 A company is connected with a charitable institution if the institution, or the institution and one or more other charitable institutions taken together, is or are entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, the whole of the voting power at any general meeting of the company: Charities Act 1992 s 58(5).
- 6 Charities Act 1992 s 58(1) (definition amended by the Deregulation and Contracting Out Act 1994 s 25). The definition of 'professional fund raiser' applies to any person apart from a person excluded by virtue of the Charities Act 1992 s 58(2), (3): see the text and notes 9-16. 'Fund raising business' means any business carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable, benevolent or philanthropic purposes: s 58(1).
- 7 'Represent' and 'solicit' mean respectively represent and solicit in any manner whatever, whether expressly or impliedly and whether done by speaking directly to the person or persons to whom the representation or solicitation is addressed (whether when in his or their presence or not), or by means of a statement published in any newspaper, film or radio or television programme, or otherwise and references to a representation or solicitation must be construed accordingly: Charities Act 1992 s 58(6)(a). Any reference to soliciting or otherwise procuring money or other property is a reference to soliciting or otherwise procuring money or other property whether any consideration is, or is to be, given in return for the money or other property or not: s 58(6)(b). Where any solicitation of money or other property for the benefit of a charitable institution is made in accordance with arrangements between any person and that institution, and under those arrangements that person will be responsible for receiving on behalf of the institution money or other property given in response to the solicitation, then that person is to be regarded as soliciting money or other property for the benefit of the institution: s 58(7). Where any fund raising venture is undertaken by a professional fund raiser in the course of a radio or television programme, any solicitation which is made by a person in the course of the programme at the instance of the fund raiser is to be regarded as made by the fund raiser and not by that person, whether or not the solicitation is made by that person for any reward: s 58(8). 'Radio or television programme' includes any item included in a programme service within the meaning of the Broadcasting Act 1990 s 201 (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 16): Charities Act 1992 s 58(1).
- 8 Charities Act 1992 s 58(1)(b). The definition of 'professional fund raiser' applies to any person apart from a person excluded by virtue of s 58(2), (3): see the text and notes 9-16.
- 9 Charities Act 1992 s 58(2)(a).
- 10 Charities Act 1992 s 58(2)(b).
- 11 As to the meaning of 'collector' see PARA 491 note 15; definition applied by the Charities Act 1992 s 58(2) (amended by the Charities Act 2006 Sch 8 paras 89, 90(1), (3)).
- 12 Charities Act 1992 s 58(2)(c). This provision applies to any person acting as a collector in respect of a public charitable collection apart from a person who is a promoter of such a collection by virtue of the Charities Act 2006 s 47(1) (not yet in force save for the purposes listed in PARA 491 note 10): see the Charities Act 1992 s 58(2)(c) (amended by the Charities Act 2006 Sch 8 paras 89, 90(1), (3)(a)). As to the meaning of 'public charitable collection' see PARA 491; definition applied by the Charities Act 1992 s 58(2) (amended by the Charities Act 2006 Sch 8 paras 89, 90(1), (3)).
- 13 Charities Act 1992 s 58(2)(d).
- 14 Charities Act 1992 s 58(2)(e).
- 15 Charities Act 1992 s 58(3)(a) (amended by SI 2009/508). The Minister may by order amend the Charities Act 1992 s 58(3) by substituting a different sum for any sum for the time being specified there: s 58(10)

(amended by SI 2006/2951). As to the making of orders generally see the Charities Act 1992 s 77; and PARA 584. As to the Minister see PARA 580.

16 Charities Act 1992 s 58(3)(b) (amended by SI 2009/508). See note 15.

17 'Promotional venture' means any advertising or sales campaign or any other venture undertaken for promotional purposes: Charities Act 1992 s 58(1).

18 'Charitable contributions', in relation to any representation made by any commercial participator or other person, means:

52 (1) the whole or part of the consideration given for goods or services sold or supplied by him, or of any proceeds (other than such consideration) of a promotional venture undertaken by him; or

53 (2) sums given by him by way of donation in connection with the sale or supply of any such goods or services (whether the amount of such sums is determined by reference to the value of any such goods or services or otherwise) (Charities Act 1992 s 58(1)).

'Services' includes facilities, and in particular access to any premises or event, membership of any organisation, the provision of advertising space, and the provision of any financial facilities, and references to the supply of services are to be construed accordingly: s 58(9).

19 Charities Act 1992 s 58(1) (amended by the Deregulation and Contracting Out Act 1994 s 25).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/474. Prescribed agreement with charitable institution.

474. Prescribed agreement with charitable institution.

It is unlawful for a professional fund raiser¹ to solicit² money or other property for the benefit of a charitable institution³, or for a commercial participator⁴ to represent⁵ that charitable contributions⁶ are to be given to or applied for the benefit of a charitable institution unless, in either case, he does so in accordance with an agreement with the institution satisfying the prescribed requirements⁷. Where on the application of a charitable institution the court⁸ is satisfied that any person has contravened or is contravening these provisions in relation to the institution, and that, unless restrained, any such contravention is likely to continue or be repeated, the court may grant an injunction restraining the contravention, but no other remedy is available⁹.

Where (1) a charitable institution makes any agreement with a professional fund raiser or a commercial participator by virtue of which the professional fund raiser is authorised to solicit money or other property for the benefit of the institution or the commercial participator is authorised to represent that charitable contributions are to be given to or applied for the benefit of the institution, as the case may be¹⁰; but (2) the agreement does not satisfy the prescribed requirements in any respect¹¹, the agreement is not enforceable against the institution except to such extent, if any, as may be provided by an order of the court¹². A professional fund raiser or commercial participator who is a party to any such agreement is not entitled to receive any amount by way of remuneration or expenses in respect of anything done by him in pursuance of the agreement unless¹³: (a) he is so entitled under any provision of the agreement¹⁴; and (b) either the agreement satisfies the prescribed requirements or any such provision has effect¹⁵ by virtue of an order of the court¹⁶.

1 As to the meaning of 'professional fund raiser' see PARA 473.

2 As to the meaning of 'solicit' see PARA 473 note 7.

- 3 As to the meaning of 'charitable institution' see PARA 473.
- 4 As to the meaning of 'commercial participator' see PARA 473.
- 5 As to the meaning of 'represent' see PARA 473 note 7.
- 6 As to the meaning of 'charitable contributions' see PARA 473 note 18. As to references to soliciting money or other property for the benefit of the institution see PARA 473 note 7. As to the meaning of 'institution' see PARA 473 note 2.
- 7 Charities Act 1992 s 59(1), (2). 'Prescribed requirements' means such requirements as are prescribed by regulations made by virtue of s 64(2)(a) (see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024; and PARA 482 et seq): Charities Act 1992 s 59(6).
- 8 'Court' means the High Court or a county court: Charities Act 1992 s 58(1).
- 9 Charities Act 1992 s 59(3).
- 10 Charities Act 1992 s 59(4)(a).
- 11 Charities Act 1992 s 59(4)(b).
- 12 Charities Act 1992 s 59(4).
- 13 Charities Act 1992 s 59(5).
- 14 Charities Act 1992 s 59(5)(a).
- 15 Ie under the Charities Act 1992 s 59(4): see the text and notes 10-12.
- 16 Charities Act 1992 s 59(5)(b).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/475. Requirement to indicate institutions benefiting and arrangements for remuneration: professional fund raisers and commercial participators.

475. Requirement to indicate institutions benefiting and arrangements for remuneration: professional fund raisers and commercial participators.

Where a professional fund raiser¹ solicits² money or other property for the benefit of one or more particular charitable institutions³, the solicitation must be accompanied by a statement clearly indicating: (1) the name or names of the institution or institutions concerned; (2) if more than one, the proportions in which they are respectively to benefit; and (3) the method by which the fund raiser's remuneration in connection with the appeal⁴ is to be determined and the notifiable amount of that remuneration⁵. Where a professional fund raiser solicits money or other property for charitable, benevolent or philanthropic purposes⁶ of any description, rather than for the benefit of one or more particular charitable institutions, the solicitation must be accompanied by a statement clearly indicating⁷: (a) the fact that he is soliciting money or other property for those purposes and not for the benefit of any particular charitable institution or institutions⁸; (b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different charitable institutions⁹; and (c) the method by which his remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration¹⁰.

Where any representation¹¹ is made by a commercial participator¹² to the effect that charitable contributions¹³ are to be given to or applied for the benefit of one or more particular charitable institutions, the representation must be accompanied by a statement clearly indicating¹⁴: (i) the

name or names of the institution or institutions concerned¹⁵; (ii) if there is more than one institution concerned, the proportions in which they are respectively to benefit¹⁶; and (iii) the notifiable amount of whichever of the following sums is applicable in the circumstances: (A) the sum representing so much of the consideration given for goods or services¹⁷ sold or supplied by him as is to be given to or applied for the benefit of the institution or institutions concerned; (B) the sum representing so much of any other proceeds of a promotional venture¹⁸ undertaken by him as is to be so given or applied; or (C) the sum of the donations by him in connection with the sale or supply of any such goods or services which are to be so given or supplied¹⁹.

If any such solicitation or representation as is referred to above is made in the course of a radio or television programme²⁰, and in association with an announcement to the effect that payment may be made by means of a credit or debit card²¹, the statement required must include full details of the right to have refunded²² any payment of £100 or more which is so made²³.

If any such solicitation or representation as is referred to above is made orally, but is not made by speaking directly to the particular person or persons to whom it is addressed and in his or their presence, or in the course of any radio or television programme, the professional fund raiser or commercial participator concerned must within seven days of any payment of £100 or more being made to him in response to the solicitation or representation, give the person making the payment²⁴ a written statement of the matters which are required to be contained in the statements²⁵, and full details of the right to cancel an agreement made in response to his solicitation or representation²⁶ and the right to a refund²⁷ of the payment made in response²⁸.

Where any requirement of the above mentioned provisions²⁹ is not complied with in relation to any solicitation or representation, the professional fund raiser or commercial participator concerned is guilty of an offence³⁰. It is a defence for such a person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence³¹.

1 As to the meaning of 'professional fund raiser' see PARA 473.

2 As to the meaning of 'solicit' see PARA 473 note 7.

3 As to the meaning of 'charitable institution' see PARA 473. As to references to soliciting money or other property for the benefit of an institution: see PARA 473 note 7.

4 In relation to any solicitation by a professional fund raiser, 'appeal' means the campaign or other fund raising venture in the course of which the solicitation is made: Charities Act 1992 s 60(10).

5 Charities Act 1992 s 60(1) (amended by the Charities Act 2006 s 67(1), (2)). A reference to the 'notifiable amount' of any remuneration or other sum is a reference to the actual amount of the remuneration or sum, if that is known at the time when the statement is made, and otherwise to the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances: Charities Act 1992 s 60(3A) (added by the Charities Act 2006 s 67(1), (5)).

Regulations may specify the manner in which money or other property acquired by professional fund raisers or commercial participators for the benefit of, or otherwise falling to be given to or applied by such persons for the benefit of, charitable institutions is to be transmitted to such institutions: see the Charities Act 1992 s 64(2)(c); and PARA 482. Regulations may also provide for s 60 to apply, with any specified modifications, in relation to solicitations or representations made in the course of radio or television programmes by charitable institutions or by companies connected with such institutions: see s 64(2)(d); and PARA 482.

6 As to the meaning of 'charitable purposes' see PARA 473 note 2.

7 Charities Act 1992 s 60(2).

8 Charities Act 1992 s 60(2)(a).

9 Charities Act 1992 s 60(2)(b).

10 Charities Act 1992 s 60(2)(c) (substituted by the Charities Act 2006 s 67(1), (3)). As to the meaning of 'notifiable amount' see note 5.

- 11 As to the meaning of 'representation' see PARA 473 note 7.
- 12 As to the meaning of 'commercial participator' see PARA 473.
- 13 As to the meaning of 'charitable contributions' see PARA 473 note 18.
- 14 Charities Act 1992 s 60(3).
- 15 Charities Act 1992 s 60(3)(a).
- 16 Charities Act 1992 s 60(3)(b).
- 17 As to the meaning of 'services' see PARA 473 note 18.
- 18 As to the meaning of 'promotional venture' see PARA 473 note 17.
- 19 Charities Act 1992 s 60(3)(c) (substituted by the Charities Act 2006 s 67(1), (4)).
- 20 As to the meaning of 'radio or television programme' see PARA 473 note 7.
- 21 'Credit card' means a card which is a credit-token within the meaning of the Consumer Credit Act 1974 (see **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 88); Charities Act 1992 s 58(1). 'Debit card' means a card the use of which by its holder to make a payment results in a current account of his at a bank, or at any other institution providing banking services, being debited with the payment: s 58(1).
- 22 Ie under the Charities Act 1992 s 61(1): see PARA 478. The Minister may by order amend s 61(1) by substituting a different sum for the sum for the time being specified there and make such consequential amendments in s 60 as he considers appropriate: see s 61(8) (amended by SI 2006/2951); and PARA 478. As to the Minister see PARA 580. As to the making of orders generally see the Charities Act 1992 s 77; and PARA 584.
- 23 Charities Act 1992 s 60(4) (amended by SI 2009/508). Regulations may provide for the Charities Act 1992 s 60(4) to apply, with any specified modifications, in relation to solicitations or representations made in the course of radio or television programmes by charitable institutions or by companies connected with such institutions: see s 64(2)(d); and PARA 482.
- 24 The reference to the making of a payment is a reference to the making of a payment of whatever nature and by whatever means, including a payment made by means of a credit card or a debit card, and for these purposes: (1) where the person making any such payment makes it in person, it is regarded as made at the time when it is so made; (2) where the person making any such payment sends it by post, it is regarded as made at the time when it is posted; and (3) where the person making any such payment makes it by giving, by telephone or by means of any other electronic communications apparatus, authority for an account to be debited with the payment, it is regarded as made at the time when any such authority is given: Charities Act 1992 s 60(6) (amended by the Communications Act 2003 s 406(1), Sch 17 para 118).
- 25 Ie those required by the Charities Act 1992 s 60(1), (2) or (3): see the text and notes 1-19.
- 26 Ie under the Charities Act 1992 s 61(2): see PARA 478.
- 27 Ie under the Charities Act 1992 s 61(2), (3): see PARA 478.
- 28 Charities Act 1992 s 60(5) (amended by SI 2009/508).
- 29 Ie those contained in the Charities Act 1992 s 60(1)-(5): see the text and notes 1-28.
- 30 Charities Act 1992 s 60(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 60(7). As to the standard scale see PARA 308. Where the commission by any person of an offence under s 60(7) is due to the act or default of some other person, that other person is also guilty of the offence and may be charged and convicted whether or not proceedings are taken against the first named person: s 60(9). As to offences by a body corporate see s 75; and PARA 582.
- 31 Charities Act 1992 s 60(8).

Requirement to indicate institutions benefiting and arrangements for remuneration: officers, employees and trustees of charitable institutions or connected companies.

476. Requirement to indicate institutions benefiting and arrangements for remuneration: officers, employees and trustees of charitable institutions or connected companies.

The Charities Act 1992 provides disclosure requirements for a person who: (1) is an officer or employee of a charitable institution¹ or a company connected with any such institution, or a trustee of any such institution; (2) is acting as a collector in that capacity; and (3) receives remuneration either in his capacity as officer, employee or trustee or for acting as a collector². Where such a person solicits³ money or other property for the benefit of one or more particular charitable institutions, the solicitation must be accompanied by a statement clearly indicating: (a) the name or names of the institution or institutions for whose benefit the solicitation is being made; (b) if there is more than one such institution, the proportions in which the institutions are respectively to benefit; (c) the fact that he is an officer, employee or trustee of the institution or company; and (d) the fact that he is receiving remuneration as an officer, employee or trustee or, as the case may be, for acting as a collector⁴. Where such a person solicits money or other property for charitable, benevolent or philanthropic purposes⁵ of any description, rather than for the benefit of one or more particular charitable institutions, the solicitation must be accompanied by a statement clearly indicating: (i) the fact that he is soliciting money or other property for those purposes and not for the benefit of any particular charitable institution or institutions; (ii) the method by which it is to be determined how the proceeds of the appeal⁶ are to be distributed between different charitable institutions; (iii) the fact that he is an officer, employee or trustee of the institution or company mentioned; and (iv) the fact that he is receiving remuneration as an officer, employee or trustee or, as the case may be, for acting as a collector⁷.

Where any of the above requirements is not complied with in relation to any solicitation, the collector concerned is guilty of an offence⁸. It is a defence for such a person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence⁹.

1 As to the meaning of 'charitable institution' see PARA 473.

2 Charities Act 1992 s 60A(6) (ss 60A, 60B added by the Charities Act 2006 s 68). However, a person does not fall within these provisions if he falls within the statutory earning limit: Charities Act 1992 ss 60A(7), 60B(4) (as so added). A person falls within this limit if the remuneration received by him is not more than £10 per day or £1,000 per year or, if a lump sum, is not more than £1,000: s 60B(5) (as so added; and amended by SI 2009/508). The Minister may by order amend the Charities Act 1992 s 60B(5) by substituting a different sum for any specified sum for the time being specified there: s 60B(6) (as so added). As to the making of orders generally see s 77; and PARA 584. As to the Minister see PARA 580.

'Collector' has the meaning given by the Charities Act 2006 s 47(1) (not yet in force, save for the purposes listed in PARA 491 note 1: see PARA 491 note 15): Charities Act 1992 s 60A(10) (as so added).

3 As to the meaning of 'solicit' see PARA 473 note 7.

4 Charities Act 1992 s 60A(4) (as added: see note 2).

5 As to the meaning of 'charitable purposes' see PARA 473 note 2.

6 'Appeal', in relation to any solicitation by a collector, means the campaign or other fund raising venture in the course of which the solicitation is made: Charities Act 1992 s 60A(10) (as added: see note 2).

7 Charities Act 1992 s 60A(5) (as added: see note 2).

8 Charities Act 1992 s 60A(9) (as added: see note 2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 60A(8)(b) (as added: see note 2). As to the

standard scale see PARA 308. Where the commission by any person of an offence under s 60A(8)(b) is due to the act or default of some other person, that other person is also guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person: ss 60(9), 60A(9) (as added: see note 2). As to offences by a body corporate see s 75; and PARA 582.

9 Charities Act 1992 ss 60(8), 60A(9) (as added: see note 2).

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477. Requirement to indicate institutions benefiting and arrangements for remuneration: other persons.

From a day to be appointed¹, the Charities Act 1992 provides for the following disclosure requirements for persons other than professional fund raisers² and the officers, employees and trustees of charitable institutions or connected companies³. Where a person acting for reward as a collector in respect of a public charitable collection⁴ solicits⁵ money or other property for the benefit of one or more particular charitable institutions⁶, the solicitation must meet the same requirements as if the soliciting were carried on by a professional fund raiser⁷. However, these provisions will not apply to a person if, in relation to his acting for reward as a collector in respect of the collection, he is a promoter⁸ or falls under the statutory earnings limit⁹.

Where any of the above requirements is not complied with in relation to any solicitation, the collector concerned is guilty of an offence¹⁰. It is a defence for such a person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence¹¹.

1 The Charities Act 1992 s 60A is added by the Charities Act 2006 s 68 as from a day to be appointed under s 79(2). At the date at which this volume states the Charities Act 1992 s 60A was not in force only in relation to s 60A(4)-(7), (8)(b), (10) and no such day had been appointed in relation to s 60A(1)-(3), (8)(b).

2 As to the meaning of 'professional fund raiser' see PARA 473. As to the requirements for professional fund raisers see PARA 475.

3 As to the requirements for such officers, employees and trustees see PARA 476.

4 'Public charitable collection' has the meaning given by the Charities Act 2006 s 45 (see PARA 491): Charities Act 1992 s 60A(10) (as added: see note 1). 'Collector' has the meaning given by the Charities Act 2006 s 47(1) (not yet in force, save for the purposes listed in PARA 491 note 1: see PARA 491 note 14): Charities Act 1992 s 60A(10) (as so added).

5 As to the meaning of 'solicit' see PARA 473 note 7. As to the meaning of 'solicitation' see PARA 473 note 7.

6 As to the meaning of 'charitable institution' see PARA 473. As to references to soliciting money or other property for the benefit of an institution: see PARA 473 note 7.

7 Charities Act 1992 s 60A(1) (as prospectively added: see note 1).

8 Charities Act 1992 s 60A(2)(a), (3)(a) (as prospectively added: see note 1). 'Promoter' has the same meaning as in relation to public charitable collections: see PARA 492 note 3.

9 Charities Act 1992 s 60A(2)(b) (as so added). As to the statutory earnings limit see s 60B(1); and PARA 476 note 2.

10 Charities Act 1992 s 60A(8)(a) (as prospectively added: see note 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 60A(8) (as so added). As to the standard scale see PARA 308. Where the commission by any person of an offence under s 60A(8)(a) is due

to the act or default of some other person, that other person is also guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person: ss 60(9), 60A(9) (as added: see note 1). As to offences by a body corporate see s 75; and PARA 582.

11 Charities Act 1992 ss 60(8), 60A(9) (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/478. Cancellation of payments and agreements made in response to appeals.

478. Cancellation of payments and agreements made in response to appeals.

Where: (1) a person (the 'donor') in response to solicitation¹ by a professional fund raiser² or a representation³ by a commercial participator⁴ which is made in the course of a radio or television programme⁵, makes any payment⁶ of £100⁷ or more to the relevant fund raiser⁸ by means of a credit card or a debit card⁹; but (2) before the end of a period of seven days beginning with the date of the solicitation or representation, the donor serves on the relevant fund raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the payment¹⁰, the donor is entitled¹¹ to have the payment refunded to him forthwith by the relevant fund raiser¹².

Certain agreements entered into by a donor in response to any solicitation or representation made orally but not made by speaking directly to the particular person or persons to whom it is addressed and in his or their presence, or in the course of any radio or television programme¹³ may be cancelled¹⁴. This can be done in the case of an agreement with the relevant fund raiser under which the donor is, or may be, liable to make any payment or payments¹⁵ to the relevant fund raiser, and the amount or the aggregate amount which the donor is, or may be, liable to pay to him under the agreement is £100 or more¹⁶. If, before the end of the period of seven days beginning with the date when he is given the required written statement¹⁷, the donor serves on the relevant fund raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the agreement¹⁸, the notice operates, as from the time when it is served, to cancel the agreement and any liability of any person other than the donor in connection with the making of any such payment or payments¹⁹. The donor is further entitled²⁰ to have any payment of £100 or more²¹ made by him under the agreement refunded to him forthwith by the relevant fund raiser²². Where no such agreement has been entered into but, in response to such solicitation or representation as is referred to above²³, the donor has made any payment of £100²⁴ or more to the relevant fund raiser, the donor may before the end of the period of seven days beginning with the date when the donor is given any such written statement as is required²⁵ serve on the relevant fund raiser a notice in writing indicating his intention to cancel the payment²⁶. However the notice is expressed, it entitles the donor to have the payment refunded to him forthwith by the relevant fund raiser²⁷.

Further, none of the above provisions²⁸ has effect in relation to any payment made or to be made in respect of services²⁹ which have been supplied at the time when the relevant notice is served³⁰. In any of the cases mentioned above the right of any person to have a payment refunded to him³¹: (a) is a right to have refunded to him the amount of the payment less any administrative expenses reasonably incurred by the relevant fund raiser in connection with the making of the refund or, as the case may require³², in dealing with the notice of cancellation served upon him³³; and (b) is, in the case of a payment for goods already received, conditional upon the restitution being made of the goods in question³⁴.

1 As to the meaning of 'solicitation' see PARA 473 note 7.

2 le under the Charities Act 1992 s 60(1), (2) (see PARA 475). As to the meaning of 'professional fund raiser' see PARA 473.

3 As to the meaning of 'representation' see PARA 473 note 7.

4 le under the Charities Act 1992 s 60(3) (see PARA 475). As to the meaning of 'commercial participator' see PARA 473.

5 As to the meaning of 'radio or television programme' see PARA 473 note 7.

6 For these purposes, any reference to the making of a payment is a reference to the making of a payment of whatever nature and, in the case of the Charities Act 1992 s 61(2) or (3) (see the text and notes 7-21), a payment made by whatever means, including a payment made by means of a credit card or a debit card: s 61(6). As to when a payment is to be regarded as having been made see s 60(6) (see PARA 475 note 24); applied by s 61(6). As to the meanings of 'credit card' and 'debit card' PARA 475 note 21.

7 The Minister may by order amend any provision of the Charities Act 1992 s 61 by substituting a different sum for the sum for the time being specified there and make such consequential amendments in s 60 (see PARA 475) as he considers appropriate: s 61(8) (amended by SI 2006/2951). As to the making of orders generally see the Charities Act 1992 s 77; and PARA 584. As to the Minister see PARA 580.

8 'Relevant fund raiser', in relation to any solicitation or representation, means the professional fund raiser or commercial participator by whom it is made: Charities Act 1992 s 61(7).

9 Charities Act 1992 s 61(1)(a) (amended by SI 2009/508).

10 Charities Act 1992 s 61(1)(b).

11 le subject to the Charities Act 1992 s 61(4) (see the text and notes 31-33).

12 Charities Act 1992 s 61(1). Regulations may provide for s 61 to apply, with any specified modifications, in relation to solicitations or representations made in the course of radio or television programmes by charitable institutions or by companies connected with such institutions: see s 64(2)(d); and PARA 482.

13 le one falling within the Charities Act 1992 s 60(5) (see PARA 475 text and notes 25-28). As to the meaning of 'radio or television programme' see PARA 473 note 7.

14 See the Charities Act 1992 s 61(2).

15 See note 6.

16 See the Charities Act 1992 s 61(2)(a) (amended by SI 2009/508). See also note 7.

17 le the statement required under the Charities Act 1992 s 60(5)(a) (see PARA 475).

18 Charities Act 1992 s 61(2)(b).

19 See the Charities Act 1992 s 61(2).

20 le subject to the Charities Act 1992 s 61(4) (see the text and notes 31-33).

21 See note 7.

22 Charities Act 1992 s 61(2) (amended by SI 2009/508).

23 le one falling within the Charities Act 1992 s 60(5) (see PARA 475 text and notes 25-28).

24 See note 7.

25 le the statement required under the Charities Act 1992 s 60(5)(a) (see PARA 475).

26 Charities Act 1992 s 61(3) (amended by SI 2009/508).

27 Charities Act 1992 s 61(3) (as amended: see note 26).

28 le under the Charities Act 1992 s 61(1)-(3) (see the text and notes 1-27).

29 As to the meaning of 'services' see PARA 473 note 18.

- 30 Charities Act 1992 s 61(5).
- 31 See note 28.
- 32 ie under the Charities Act 1992 s 61(2) (see the text and notes 13-14).
- 33 Charities Act 1992 s 61(4)(a).
- 34 Charities Act 1992 s 61(4)(b).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/479. Right of charitable institutions to prevent unauthorised fund raising.

479. Right of charitable institutions to prevent unauthorised fund raising.

Where on the application of any charitable institution¹:

- 367 (1) the court² is satisfied that any person has done or is doing either of the following, namely: (a) soliciting money or other property for the benefit of the institution³; or (b) representing that charitable contributions⁴ are to be given to or applied for the benefit of the institution, and that, unless restrained, he is likely to do further acts of that nature⁵; and
- 368 (2) the court is also satisfied as to one or more of the following: (a) that the person in question is using methods of fund raising to which the institution objects; (b) that that person is not a fit and proper person to raise funds for the institution; and (c) where the conduct complained of is the making of such representations as are mentioned in head (1)(b) above, that the institution does not wish to be associated with the particular promotional or other fund raising venture in which that person is engaged⁶,

then the court may grant an injunction restraining the doing of any such acts⁷. However, the power to grant an injunction is not exercisable on the application of a charitable institution unless the institution has, not less than 28 days before making the application, served on the person in question a notice in writing⁸:

- 369 (i) requesting him to cease forthwith soliciting money or other property for the benefit of the institution or representing that charitable contributions are to be given to or applied for the benefit of the institution, as the case may be⁹; and
- 370 (ii) stating that, if he does not comply with the notice, the institution will make an application under these provisions for an injunction¹⁰.

Where (A) a charitable institution has served on any person such a notice and that person has complied with the notice¹¹; but (B) that person has subsequently begun to carry on activities which are the same, or substantially the same, as those in respect of which the relevant notice was served¹², the institution is not, in connection with an application made by it under these provisions in respect of the activities carried on by that person, required to serve a further notice on him, if the application is made not more than 12 months after the date of service of the relevant notice¹³.

1 As to the meaning of 'charitable institution' see PARA 473.

- 2 As to the meaning of 'court' see PARA 474 note 8.
- 3 As to references to soliciting money or other property for the benefit of an institution see PARA 473 note 7. As to the meaning of 'solicit' see PARA 473 note 7.
- 4 As to the meaning of 'charitable contributions' see PARA 473 note 18. As to the meaning of 'represent' see PARA 473 note 7.
- 5 Charities Act 1992 s 62(1)(a).
- 6 Charities Act 1992 s 62(1)(b), (2). As to the meaning of 'promotional venture' see PARA 473 note 17.
- 7 Charities Act 1992 s 62(1). Section 62 does not have the effect of authorising a charitable institution to make an application in respect of anything done by a professional fund raiser or commercial participator in relation to the institution: s 62(5). As to the meanings of 'professional fund raiser' and 'commercial participator' see PARA 473. As to injunctions see **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq.
- 8 Charities Act 1992 s 62(3). The notice served must specify the circumstances which gave rise to the serving of the notice and the grounds on which an application for an injunction is to be made: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 4.
- 9 Charities Act 1992 s 62(3)(a).
- 10 Charities Act 1992 s 62(3)(b).
- 11 Charities Act 1992 s 62(4)(a).
- 12 Charities Act 1992 s 62(4)(b).
- 13 Charities Act 1992 s 62(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/480. False statements relating to institutions which are not registered charities.

480. False statements relating to institutions which are not registered charities.

Where a person solicits money or other property for the benefit of an institution¹ in association with a representation² that the institution is a registered charity³ and the institution is not such a charity, he is guilty of an offence⁴. However, in any proceedings for such an offence, it is a defence for the accused to prove that he believed, on reasonable grounds, that the institution was a registered charity⁵.

- 1 As to references to soliciting money or other property for the benefit of an institution see PARA 473 note 7. As to the meaning of 'solicit' see PARA 473 note 7. As to the meaning of 'institution' see PARA 473 note 2.
- 2 As to the meaning of 'representation' see PARA 473 note 7.
- 3 For these purposes, 'registered charity' means a charity which is for the time being registered in the register of charities kept under the Charities Act 1993 s 3 (see PARA 304): Charities Act 1992 s 63(2) (amended by the Charities Act 1993 s 98(1), Sch 6 para 29(1), (6); and the Deregulation and Contracting Out Act 1994 s 26(3)).
- 4 Charities Act 1992 s 63(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 63(1). As to the standard scale see PARA 308.
- 5 Charities Act 1992 s 63(1A) (added by the Deregulation and Contracting Out Act 1994 s 26(2)).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/481. Service of notices and other documents.

481. Service of notices and other documents.

Any notice or other document required or authorised to be given or served in connection with the control of fund raising for charitable institutions¹ may be served or given to a person (other than a body corporate) by delivering it to that person, by leaving it at his last known address in the United Kingdom², or by sending it by post to him at that address³. In the case of a body corporate, such notice or document may be served or given by delivering it or sending it by post to the registered or principal office of the body in the United Kingdom, or, if it has no such office in the United Kingdom, to any place in the United Kingdom where it carries on business or conducts its activities, as the case may be⁴. Any such document may also be served on or given to a person (including a body corporate) by sending it by post to that person at an address notified by that person for these purposes to the person or persons by whom it is required or authorised to be served or given⁵.

1 le under the Charities Act 1992 Pt II (ss 58-64A) (see PARAS 473-490).

2 As to the meaning of 'United Kingdom' see PARA 187 note 17.

3 Charities Act 1992 s 76(1)(b), (2).

4 Charities Act 1992 s 76(3).

5 Charities Act 1992 s 76(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/482. Minister's power to make regulations in relation to the provisions of the Charities Act 1992.

482. Minister's power to make regulations in relation to the provisions of the Charities Act 1992.

The Minister¹ may make such regulations² as appear to him to be necessary or desirable for any purposes connected with the provisions of the Charities Act 1992³ relating to the control of charitable fund raising⁴.

Any such regulations may⁵:

- 371 (1) prescribe the form and content of agreements made in relation to raising funds for charitable institutions⁶, and notices served⁷ in relation to injunctions granted by the court preventing unauthorised fund raising⁸;
- 372 (2) require professional fund raisers⁹ or commercial participators¹⁰ who are parties to such agreements with charitable institutions¹¹ to make available to the institutions books, documents or other records (however kept) which relate to the institutions¹²;
- 373 (3) specify the manner in which money or other property acquired by professional fund raisers or commercial participators for the benefit of, or otherwise falling to be given to or applied by such persons for the benefit of, charitable institutions is to be transmitted to such institutions¹³;

- 374 (4) provide for: (a) the provisions relating to the requirement to indicate institutions benefiting and arrangements for remuneration¹⁴; and (b) the provisions relating to the cancellation of payments and agreements made in response to appeals¹⁵, which have effect in relation to solicitations or representations made in the course of radio or television programmes¹⁶ to have effect, subject to any modifications specified in the regulations, in relation to solicitations or representations made in the course of such programmes by charitable institutions, or by companies connected with such institutions¹⁷, and, in that connection, provide for any other provisions of Part II of the Charities Act 1992 to have effect for the purposes of the regulations subject to any modifications so specified¹⁸;
- 375 (5) make other provision regulating the raising of funds for charitable, benevolent or philanthropic purposes¹⁹, whether by professional fund raisers or commercial participators or otherwise²⁰.

Regulations under these provisions may provide that any failure to comply with a specified provision of the regulations is an offence²¹.

1 As to the Minister see PARA 580.

2 In the exercise of this power, the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, have been made. As to the making of regulations generally see the Charities Act 1992 s 77; and PARA 584.

3 I.e. the Charities Act 1992 Pt II (ss 58-64A): see PARAS 473-490.

4 Charities Act 1992 s 64(1) (amended by SI 2006/2951).

5 Charities Act 1992 s 64(2). This provision is expressed to be without prejudice to s 64(1) (see the text and notes 1-4): s 64(2).

6 I.e. agreements under the Charities Act 1992 s 59: see PARA 474.

7 I.e. under the Charities Act 1992 s 62(3): see PARA 479.

8 Charities Act 1992 s 64(2)(a). As to regulations in relation to agreements between charitable institutions and professional fund raisers see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2; and PARA 484. As to regulations in relation to agreements between charitable institutions and commercial participators see reg 3; and PARA 485. As to regulations in relation to notices prior to injunction to prevent unauthorised fund raising see reg 4; and PARA 486.

9 As to the meaning of 'professional fund raiser' see PARA 473.

10 As to the meaning of 'commercial participator' see PARA 473.

11 As to the meaning of 'charitable institution' see PARA 473.

12 Charities Act 1992 s 64(2)(b). As to regulations in relation to the availability of books, documents or other records see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 5; and PARA 489.

13 Charities Act 1992 s 64(2)(c). For these purposes, the reference to such money or other property mentioned in s 64(2)(c) includes a reference to money or other property which, in the case of a professional fund raiser or commercial participator: (1) has been acquired by him otherwise than in accordance with an agreement with a charitable institution; but (2) by reason of any solicitation or representation in consequence of which it has been acquired, is held by him on trust for such an institution: s 64(3). As to the meanings of 'solicitations' and 'representations' see PARA 473 note 7.

As to regulations in relation to the transmission of money and other property to charitable institutions see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6; and PARA 487.

14 I.e. the Charities Act 1992 s 60: see PARA 475.

15 I.e. the Charities Act 1992 s 61: see PARA 478.

16 As to the meaning of 'radio or television programmes' see PARA 473 note 7.

17 As to references to a company connected with charitable institutions see PARA 473 note 5. As to the meaning of 'company' see PARA 227; definition applied by the Charities Act 1992 s 58(1).

18 Charities Act 1992 s 64(2)(d).

19 As to the meaning of 'charitable purposes' see PARA 473 note 2.

20 Charities Act 1992 s 64(2)(e). As to regulations in relation to fund raising for charitable, benevolent or philanthropic purposes otherwise than by professional fund raisers or commercial participators see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7; and PARA 488.

21 Charities Act 1992 s 64(4). Such regulations may also provide that any such offence is punishable on summary conviction by a fine not exceeding level 2 on the standard scale: s 64(4). As to the standard scale see PARA 308.

As to regulations in relation to offences and penalties for failure to comply with specified provisions see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 8; and PARA 490.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/483. Minister's reserve power to make regulations about fund raising generally.

483. Minister's reserve power to make regulations about fund raising generally.

The Minister¹ may make such regulations as appear to him to be necessary or desirable for or in connection with regulating charity fund raising². 'Charity fund raising' means activities which are carried on by charitable institutions³, persons managing charitable institutions, or persons or companies connected with such institutions⁴, and which involve soliciting or otherwise procuring funds⁵ for the benefit of such institutions or companies connected with them, or for general charitable, benevolent or philanthropic purposes⁶. However, 'activities' does not include primary purpose trading⁷.

Such regulations may, in particular, impose a good practice requirement on the persons managing charitable institutions in circumstances where those institutions, the persons managing them, or persons or companies connected with such institutions, are engaged in charity fund raising⁸. A 'good practice requirement' is a requirement to take all reasonable steps to ensure that the fund raising is carried out in such a way that: (1) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured; (2) it does not involve the making of unreasonably persistent approaches to persons to donate funds; (3) it does not result in undue pressure being placed on persons to donate funds; and (4) it does not involve the making of any false or misleading representation about any of the following matters: (a) the extent or urgency of any need for funds on the part of any charitable institution or company connected with such an institution; (b) any use to which funds donated in response to the fund raising are to be put by such an institution or company; (c) the activities, achievements or finances of such an institution or company⁹.

Such regulations may provide that a person who persistently fails, without reasonable excuse, to comply with any specified requirement of the regulations is guilty of an offence¹⁰.

1 As to the Minister see PARA 580.

2 Charities Act 1992 s 64A(1) (s 64A added by the Charities Act 2006 s 69).

3 As to the meaning of 'charitable institution' see PARA 473.

4 The persons 'managing' a charitable institution are the charity trustees or other persons having the general control and management of the administration of the institution: Charities Act 1992 s 64A(7)(c) (as

added: see note 2). As to the meaning of 'charity trustees' see PARA 1 note 10. A person is 'connected' with a charitable institution if he is an employee or agent of the institution, the persons managing it, or a company connected with it, or he is a volunteer acting on behalf of the institution or such a company: s 64A(7)(d) (as added: see note 2).

5 'Funds' means money or other property: Charities Act 1992 s 64A(7)(a) (as added: see note 2).

6 Charities Act 1992 s 64A(2) (as added: see note 2). 'General charitable, benevolent or philanthropic purposes' means charitable, benevolent or philanthropic purposes other than those associated with one or more particular institutions: s 64A(7)(b) (as added: see note 2).

7 Charities Act 1992 s 64A(2) (as added: see note 2). For these purposes, 'primary purpose trading' in relation to a charitable institution, means any trade carried on by the institution or a company connected with it where the trade is carried on in the course of the actual carrying out of a primary purpose of the institution or the work in connection with the trade is mainly carried out by beneficiaries of the institution: s 64A(8) (as added: see note 2).

8 Charities Act 1992 s 64A(3) (as added: see note 2).

9 Charities Act 1992 s 64A(4), (5) (as added: see note 2).

10 Charities Act 1992 s 64A(6) (as added: see note 2). Such regulations may also provide that any such offence is punishable on summary conviction by a fine not exceeding level 2 on the standard scale: s 64A(6) (as so added). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/484. Agreements between charitable institutions and professional fund raisers.

484. Agreements between charitable institutions and professional fund raisers.

An agreement between a professional fund raiser and a charitable institution enabling the fund raiser to solicit money or other property for the benefit of the charitable institution¹ must fulfil the following requirements as to form and content². Such an agreement must be in writing and be signed by or on behalf of the charitable institution and the professional fund raiser³. It must specify:

- 376 (1) the name and address of each of the parties to the agreement⁴;
- 377 (2) the date on which the agreement was signed by or on behalf of each of those parties⁵;
- 378 (3) the period for which the agreement is to subsist⁶;
- 379 (4) any terms relating to the termination of the agreement prior to the date on which that period expires⁷; and
- 380 (5) any terms relating to the variation of the agreement during that period⁸.

The agreement must also contain: (a) a statement of its principal objectives and the methods to be used in pursuit of those objectives⁹; (b) if there is more than one charitable institution party to the agreement, provision as to the manner in which the proportion in which the institutions are respectively to benefit under the agreement is to be determined¹⁰; and (c) provision as to the amount by way of remuneration or expenses which the professional fund raiser is entitled to receive in respect of things done by him in pursuance of the agreement and the manner in which that amount is to be determined¹¹.

1 le under the Charities Act 1992 s 59(1): see PARA 474. For these purposes any reference, in relation to an agreement made for the purposes of s 59 (see PARA 474), to a charitable institution, commercial participator or professional fund raiser, is, unless the contrary intention appears, to be construed as a reference to any charitable institution, commercial participator or professional fund raiser, respectively, which is or who is a

party to the agreement: Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3). As to the meanings of 'professional fund raiser', 'charitable institution' and 'commercial participator' see PARA 473.

- 2 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(1).
- 3 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(2).
- 4 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(3)(a).
- 5 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(3)(b).
- 6 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(3)(c).
- 7 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(3)(d).
- 8 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(3)(e).
- 9 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(4)(a).
- 10 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(4)(b).
- 11 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 2(4)(c).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/485. Agreements between charitable institutions and commercial participators.

485. Agreements between charitable institutions and commercial participators.

An agreement between a commercial participator¹ and a charitable institution² enabling the commercial participator to represent that charitable contributions are to be given to or applied for the benefit of the charitable institution³ must fulfil the following requirements as to form and content⁴. Such an agreement must be in writing and be signed by or on behalf of the charitable institution and the commercial participator⁵. It must specify:

- 381 (1) the name and address of each of the parties to the agreement⁶;
- 382 (2) the date on which the agreement was signed by or on behalf of each of those parties⁷;
- 383 (3) the period for which the agreement is to subsist⁸;
- 384 (4) any terms relating to the termination of the agreement prior to the date on which that period expires⁹; and
- 385 (5) any terms relating to the variation of the agreement during that period¹⁰.

The agreement must also contain a statement of its principal objectives and the methods to be used in pursuit of those objectives¹¹. Additionally it must contain provision as to the manner in which are to be determined:

- 386 (a) if there is more than one charitable institution party to the agreement, the proportion in which the institutions which are so party are respectively to benefit under the agreement¹²; and
- 387 (b) the proportion of the consideration given for goods or services sold or supplied by the commercial participator, or of any other proceeds of a promotional venture undertaken by him, which is to be given to or applied for the benefit of the charitable institution¹³; or

388 (c) the sums by way of donations by the commercial participator in connection with the sale or supply of any goods or services sold or supplied by him which are to be so given or applied¹⁴,

as the case may require¹⁵. The agreement must also contain provision as to any amount by way of remuneration or expenses which the commercial participator is to be entitled to receive in respect of things done by him in pursuance of the agreement and the manner in which any such amount is to be determined¹⁶.

1 As to the meaning of 'commercial participator' see PARA 473. A reference to a commercial participator is to be construed as a reference to any commercial participator who is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.

2 As to the meaning of 'charitable institution' see PARA 473. A reference to a charitable institution is to be construed as a reference to any charitable institution who is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.

3 le under the Charities Act 1992 s 59(2): see PARA 474.

4 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(1).

5 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(2).

6 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(3)(a).

7 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(3)(b).

8 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(3)(c).

9 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(3)(d).

10 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(3)(e).

11 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(4)(a). The statement of methods must include, in relation to each method specified, a description of the type of charitable contributions which are to be given to, or applied for the benefit of, the charitable institution and of the circumstances in which they are to be so given or applied: reg 3(5). As to the meaning of 'charitable contributions' see PARA 473 note 18.

12 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(4)(b)(i).

13 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(4)(b)(ii).

14 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(4)(b)(iii). As to the supply of services see PARA 473 note 18.

15 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(4)(b).

16 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 3(4)(c).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/486. Notice prior to injunction to prevent unauthorised fund raising.

486. Notice prior to injunction to prevent unauthorised fund raising.

A notice served by a charitable institution¹ to prevent unauthorised fund raising² must³ specify the circumstances which gave rise to the serving of the notice and the grounds on which an application to prevent unauthorised fundraising⁴ is to be made⁵.

- 1 As to the meaning of 'charitable institution' see PARA 473.
- 2 Ie under the Charities Act 1992 s 62(3): see PARA 479.
- 3 Ie in addition to satisfying the requirements of Charities Act 1992 s 62(3): see PARA 479.
- 4 Ie under Charities Act 1992 s 62: see PARA 479.
- 5 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 4.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/487. Transmission of money and other property to charitable institutions.

487. Transmission of money and other property to charitable institutions.

Any money or other property¹ acquired by a professional fund raiser² or commercial participator³ for the benefit of, or otherwise falling to be given to or applied by such a person for the benefit of, a charitable institution⁴ must, notwithstanding any inconsistent term in the agreement⁵ with the charitable institution, be transmitted to that institution in accordance with the following provisions⁶.

A professional fund raiser or commercial participator holding any such money or property must, unless he has a reasonable excuse⁷:

- 389 (1) in the case of any money, and any negotiable instrument which is payable to or to the account of the charitable institution, as soon as is reasonably practicable after its receipt and in any event not later than the expiration of 28 days after that receipt or such other period as may be agreed with the institution⁸: (a) pay it to the person or persons having the general control and management of the administration of the institution⁹; or (b) pay it into an account held by an authorised deposit taker¹⁰ in the name of or on behalf of the institution which is under the control of the person, or any of the persons, specified in head (a) above¹¹; and
- 390 (2) in the case of any other property, deal with it in accordance with any instructions given for that purpose, either generally or in a particular case, by the charitable institution provided that¹²: (a) any property in the possession of the professional fund raiser or commercial participator either pending the obtaining of such instructions as are referred to above or in accordance with such instructions must be securely held by him¹³; (b) the proceeds of the sale or other disposal of any property are, from the time of their receipt by the professional fund raiser or commercial participator, subject to the requirements of head (1) above¹⁴.

Failure to comply with these provisions is an offence punishable on summary conviction by a fine¹⁵.

- 1 Including such money or other property referred to in the Charities Act 1992 s 64(3): see PARA 482.
- 2 As to the meaning of 'professional fund raiser' see PARA 473. A reference to a professional fund raiser is to be construed as a reference to any professional fund raiser who is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.

3 As to the meaning of 'commercial participator' see PARA 473. A reference to a commercial participator is to be construed as a reference to any commercial participator who is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.

4 As to the meaning of 'charitable institution' see PARA 473. A reference to a charitable institution is to be construed as a reference to any charitable institution which is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.

5 le an agreement made for the purposes of the Charities Act 1992 s 59: see PARA 474.

6 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(1).

7 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2).

8 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2)(a).

9 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2)(a)(i).

10 'Authorised deposit taker' means the Bank of England, a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (ss 40-55) to accept deposits, or an EEA firm of the kind mentioned in Sch 3 para 5(b) which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12(1) to accept deposits (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315)): Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(2) (substituted by SI 2001/3649). This definition must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under that provision, and Sch 3: Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(2A) (added by SI 2001/3649). See **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84.

11 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2)(a)(ii) (amended by 2001/3649). The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 480(4) refers to the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2)(a)(iii), but it is submitted that the reference should be to reg 6(2)(a)(ii).

12 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2)(b).

13 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2)(b)(i).

14 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2)(b)(ii).

15 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 8(1), (2)(b). The fine must not exceed level 2 on the standard scale: reg 8(1). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/488. Fund raising for charitable etc purposes otherwise than by professional fund raisers or commercial participators.

488. Fund raising for charitable etc purposes otherwise than by professional fund raisers or commercial participators.

The following requirements apply to any person who carries on for gain a business other than a fund raising business¹ but, in the course of that business, engages in any promotional venture in the course of which it is represented that charitable contributions² are to be applied for charitable, benevolent or philanthropic purposes³ of any description, rather than for the benefit of one or more particular charitable institutions⁴.

Where such a person makes a representation to the effect that charitable contributions are to be applied for such charitable, benevolent or philanthropic purposes he must, unless he has a reasonable excuse, ensure that the representation is accompanied by a statement clearly indicating⁵:

- 391 (1) the fact that the charitable contributions referred to in the representation are to be applied for those purposes and not for the benefit of any particular charitable institution or institutions⁶;
- 392 (2) the notifiable amount⁷ of whichever of the following sums is applicable in the circumstances: (a) the sum representing so much of the consideration given for goods or services sold or supplied by him as is to be applied for those purposes; (b) the sum representing so much of any other proceeds of a promotional venture undertaken by him as is to be so applied; or (c) the sum of the donations by him in connection with the sale or supply of any such goods or services which are to be so applied⁸; and
- 393 (3) the method by which it is to be determined how the charitable contributions referred to in the representation are to be distributed between different charitable institutions⁹.

Failure to comply with these provisions is an offence punishable on summary conviction by a fine¹⁰.

1 As to the meaning of 'fund raising business' see PARA 473 note 6.

2 As to the meaning of 'charitable contributions' see PARA 473 note 18.

3 As to references to charitable, benevolent or philanthropic purposes see PARA 473 note 2.

4 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7(1). As to the meaning of 'charitable institution' see PARA 473.

5 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7(2).

6 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7(2)(a).

7 'Notifiable amount' in relation to any sum is a reference: (1) to the actual amount of the sum, if that is known at the time when the statement is made; and (2) otherwise to the estimated amount of the sum, calculated as accurately as is reasonably possible in the circumstances: Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7(3) (added by SI 2009/1060).

8 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7(2)(b) (substituted by SI 2009/1060).

9 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7(2)(c).

10 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 8(1), (2)(c). The fine must not exceed level 2 on the standard scale: reg 8(1). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/489. Availability of books, documents or other records.

489. Availability of books, documents or other records.

A professional fund raiser¹ or commercial participator² who is a party to an agreement³ with a charitable institution⁴ must, on request and at all reasonable times, make available⁵ to any charitable institution which is a party to that agreement any books, documents or other records, however kept, which relate to that institution and are kept for the purposes of the agreement⁶. Failure to comply with these provisions is an offence punishable on summary conviction by a fine⁷.

- 1 As to the meaning of professional fund raiser see PARA 473. A reference to a professional fund raiser is to be construed as a reference to any professional fund raiser who is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.
- 2 As to the meaning of 'commercial participator' see PARA 473. A reference to a commercial participator is to be construed as a reference to any commercial participator who is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.
- 3 If an agreement made for the purposes of the Charities Act 1992 s 59: see PARA 474.
- 4 As to the meaning of 'charitable institution' see PARA 473. A reference to a charitable institution is to be construed as a reference to any charitable institution which is a party to the agreement: see the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 1(3); and PARA 484 note 1.
- 5 In the case of any record which is kept otherwise than in legible form, the reference in the text to making that record available is to be construed as a reference to making it available in legible form: Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 5(2).
- 6 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 5(1).
- 7 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 8(1), (2)(a). The fine must not exceed level 2 on the standard scale: reg 8(1). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(4) CONTROLS UNDER THE CHARITIES ACT 1992/490. Offences and penalties.

490. Offences and penalties.

Failure to comply with any of the provisions relating to: (1) the availability of books, documents or other records¹; (2) a professional fund raiser² or commercial participator³ holding money or property⁴; and (3) the statement accompanying a representation to the effect that charitable contributions⁵ are to be applied for charitable, benevolent or philanthropic purposes⁶ of any description⁷, is an offence punishable on summary conviction by a fine⁸.

- 1 If under the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 5(1): see PARA 489.
- 2 As to the meaning of 'professional fund raiser' see PARA 473.
- 3 As to the meaning of 'commercial participator' see PARA 473.
- 4 If under Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 6(2): see PARA 487.
- 5 As to the meaning of 'charitable contributions' see PARA 473 note 18.
- 6 As to references to charitable, benevolent or philanthropic purposes see PARA 473 note 2.
- 7 If under the Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 7(2): see PARA 488.
- 8 Charitable Institutions (Fund Raising) Regulations 1994, SI 1994/3024, reg 8(1), (2). The fine must not exceed level 2 on the standard scale: reg 8(1). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/491. Public charitable collections.

(5) CONTROLS UNDER THE

491. Public charitable collections.

As from a day to be appointed, the Charities Act 2006 provides for the regulation of public charitable collections¹. A 'public charitable collection' is defined as a charitable appeal which is made in any public place² ('collection in a public place'³) or by means of visits to houses⁴ or business premises⁵ ('door to door collection'⁶), or both⁷.

A 'charitable appeal' means an appeal to members of the public which is: (1) an appeal to them to give money or other property⁸, or the making of an offer to sell goods or to supply services, or the exposing of goods for sale, to them⁹, or both; and (2) made in association with a representation that the whole or any part of its proceeds¹⁰ is to be applied for charitable, benevolent or philanthropic purposes¹¹. However, a charitable appeal is not a public charitable collection if the appeal: (a) is made in the course of a public meeting¹²; (b) is made on land within a churchyard or burial ground contiguous or adjacent to a place of public worship or on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it, where the land is enclosed or substantially enclosed (whether by any wall or building or otherwise)¹³; (c) is made on land to which members of the public have access only by virtue of the express or implied permission of the occupier of the land, or by virtue of any enactment, and the occupier is the promoter of the collection¹⁴; or (d) is an appeal to members of the public to give money or other property by placing it in an unattended receptacle¹⁵.

1 Charities Act 2006 s 45(1) (not yet in force). The provisions of the Charities Act 2006 governing public charitable collections (see Pt 3 Ch 1 (ss 45-66)) are to be brought into force by order made by the Minister under s 79(2) as from a day to be appointed. At the date at which this volume states the law the only provisions brought into force are ss 45(2)-(6), 46, 47(1), for the purposes of the definition of 'professional fund raiser' in the Charities Act 1992 Pt 2 (ss 58-64A) (see PARA 473): see the Charities Act 2006 (Commencement No 2, Transitional Provisions and Savings) Order 2007, SI 2007/3286, art 3, Sch 2. As to the Minister see PARA 580.

2 'Public place' means any highway and any other place to which, at any time when the appeal is made, members of the public have or are permitted to have access and which either is not within a building, or if within a building, is a public area within any station, airport or shopping precinct or any other similar public area: Charities Act 2006 s 45(5) (not yet in force: see note 1). However, it does not include: (1) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or (2) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question: s 45(6) (not yet in force: see note 1).

3 Charities Act 2006 s 45(2)(c) (not yet in force: see note 1).

4 'House' includes any part of a building constituting a separate dwelling: Charities Act 2006 s 45(5) (not yet in force: see note 1).

5 'Business premises' means any premises used for business or other commercial purposes: Charities Act 2006 s 45(5) (not yet in force: see note 1).

6 Charities Act 2006 s 45(2)(d) (not yet in force: see note 1).

7 Charities Act 2006 s 45(2)(a) (not yet in force: see note 1).

8 The reference to the giving of money is to doing so by whatever means and it does not matter whether the giving of money or other property is for consideration or otherwise: Charities Act 2006 s 45(3) (not yet in force: see note 1).

9 Charities Act 2006 s 45(4) (not yet in force: see note 1).

10 'Proceeds', in relation to a public charitable collection, means all money or other property given, whether for consideration or otherwise, in response to the charitable appeal in question: Charities Act 2006 s 47(1) (not yet in force: see note 1).

11 Charities Act 2006 s 45(2)(b) (not yet in force: see note 1). 'Charitable, benevolent or philanthropic institution' means a charity or an institution (other than a charity) which is established for charitable, benevolent, or philanthropic purposes: s 47(1) (not yet in force: see note 1).

12 Charities Act 2006 s 46(1)(a) (not yet in force: see note 1).

13 Charities Act 2006 s 46(1)(b) (not yet in force: see note 1).

14 Charities Act 2006 s 46(1)(c) (not yet in force: see note 1). 'Occupier', in relation to unoccupied land, means the person entitled to occupy it: s 46(2) (not yet in force: see note 1).

15 Charities Act 2006 s 46(1)(d) (not yet in force: see note 1). A receptacle is unattended if it is not in the possession or custody of a person acting as a collector: s 46(3) (not yet in force: see note 1). 'Collector', in relation to a public charitable collection, means any person by whom the appeal in question is made, whether made by him alone or with others and whether made by him for remuneration or otherwise: s 47(1) (not yet in force: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/492. Restrictions on conducting collections in a public place.

492. Restrictions on conducting collections in a public place.

As from a day to be appointed, collection in a public place¹ which is not an exempt collection² must not be conducted unless the promoters³ of the collection hold a public collections certificate⁴ in respect of the collection and the collection is conducted in accordance with a permit issued by the local authority⁵ in whose area it is conducted⁶.

Where a collection in a public place is conducted in contravention of these provisions and the circumstances of the case do not fall within the statutory provisions for offences relating to local short-term collections⁷, every promoter of the collection is guilty of an offence⁸.

1 Charities Act 2006 s 45(1) (not yet in force). The provisions of the Charities Act 2006 governing public charitable collections (see Pt 3 Ch 1 (ss 45-66)) are to be brought into force by order made by the Minister under s 79(2) as from a day to be appointed. At the date at which this volume states the law the only provisions brought into force are ss 45(2)-(6), 46, 47(1), for the purposes of the definition of 'professional fund raiser' in the Charities Act 1992 Pt 2 (ss 58-64A) (see PARA 473): see the Charities Act 2006 (Commencement No 2, Transitional Provisions and Savings) Order 2007, SI 2007/3286, art 3, Sch 2. As to the Minister see PARA 580. As to the meaning of 'collection in a public place' see PARA 491.

2 ie by virtue of the Charities Act 2006 s 50 (see PARA 494): s 48(2) (not yet in force: see PARA 491 note 1).

3 'Promoter', in relation to a public charitable collection, means a person who (whether alone or with others and whether for remuneration or otherwise) organises or controls the conduct of the charitable appeal in question, or, where there is no such person, any person who acts as a collector in respect of the collection; and associated expressions are to be construed accordingly: Charities Act 2006 s 47(1) (not yet in force: see PARA 491 note 1). As to the meaning of 'collector' see PARA 491 note 15.

4 'Public collections certificate' means a certificate issued by the Charity Commission under the Charities Act 2006 s 52 (see PARA 496): s 47(1) (not yet in force: see PARA 491 note 1).

5 ie a permit issued under the Charities Act 2006 s 59 (see PARAS 500-503). 'Local authority' means a unitary authority, the council of a district so far as it is not a unitary authority, the council of a London borough or of a Welsh county or county borough, the Common Council of the City of London or the Council of the Isles of Scilly: s 47(1) (not yet in force: see PARA 491 note 1). 'Unitary authority' means the council of a county, so far as it is the council for an area for which there are no district councils, and the council of any district comprised in an area for which there is no county council: s 47(2) (not yet in force: see PARA 491 note 1). The functions exercisable under the provisions relating to public charitable collections (ie under Pt 3 Ch 1 (ss 45-66)) by a local authority are to be exercisable as respects the Inner Temple, by its Sub-Treasurer, and as respects the Middle Temple, by its Under Treasurer, and references in Pt 3 Ch 1 to a local authority or to the area of a local authority are to be construed accordingly: s 47(3) (not yet in force: see PARA 491 note 1).

6 Charities Act 2006 s 48(1) (not yet in force: see PARA 491 note 1). As to such permits see PARAS 500-503.

7 le under the Charities Act 2006 s 50(6) (see PARA 494). As to local short-term collections see PARA 494.

8 Charities Act 2006 s 48(3) (not yet in force: see PARA 491 note 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 48(3) (not yet in force: see PARA 491 note 1). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/493. Restrictions on conducting door to door collections.

493. Restrictions on conducting door to door collections.

A door to door collection¹ which is not an exempt collection² must not be conducted unless the promoters³ of the collection hold a public collections certificate⁴ in respect of the collection and have, within the prescribed⁵ period falling before the day, or the first of the days, on which the collection takes place, notified the local authority⁶ in whose area the collection is to be conducted of certain matters and provided that authority with a copy of the public collections certificate⁷. The matters to be notified to the local authority are: (1) the purpose for which the proceeds⁸ of the appeal are to be applied; (2) the prescribed particulars of when the collection is to be conducted; (3) the locality within which the collection is to be conducted; and (4) such other matters as may be prescribed⁹.

Where a door to door collection is conducted in contravention of these provisions and the circumstances of the case do not fall within the statutory provisions for offences relating to local short-term collections¹⁰, every promoter of the collection is guilty of an offence¹¹.

1 As to the meaning of 'door to door collection' see PARA 491.

2 le by virtue of the Charities Act 2006 s 50 (see PARA 494): s 49(2) (not yet in force: see PARA 491 note 1).

3 As to the meaning of 'promoter' see PARA 492 note 3.

4 As to the meaning of 'public collections certificate' see PARA 492 note 4. As to public collections certificates see PARAS 495-499.

5 'Prescribed' means prescribed by regulations under the Charities Act 2006 s 63 (see PARA 505): s 47(1) (not yet in force: see PARA 491 note 1). At the date at which this volume states the law no such regulations had been made.

6 As to the meaning of 'local authority' see PARA 492 note 5.

7 Charities Act 2006 s 49(1) (not yet in force: see PARA 491 note 1).

8 As to the meaning of 'proceeds' see PARA 491 note 10.

9 Charities Act 2006 s 49(3) (not yet in force: see PARA 491 note 1). See note 5.

10 le under the Charities Act 2006 s 50(6) (see PARA 494). As to local short-term collections see PARA 494.

11 Charities Act 2006 s 49(4) (not yet in force: see PARA 491 note 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (s 49(4) (not yet in force: see PARA 491 note 1)), unless the appeal is for goods only, in which case such a promoter is liable on summary conviction to a fine not exceeding level 3 on the standard scale (s 49(5) (not yet in force: see PARA 491 note 1)). 'Goods' includes all personal chattels other than things in action and money: s 49(6) (not yet in force: see PARA 491 note 1). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/494. Exemptions for local, short term collections.

494. Exemptions for local, short term collections.

A public charitable collection¹ is an exempt collection if it is a local, short term collection and the promoters² notify the local authority³ in whose area it is to be conducted of certain matters within the prescribed⁴ period falling before the day (or the first of the days) on which the collection takes place, unless, within the prescribed period beginning with the date when they are so notified, the local authority serves a statutory notice⁵ on the promoters⁶. A public charitable collection is a local, short term collection if the appeal is local in character and the duration of the appeal does not exceed the prescribed period of time⁷. The matters to be notified to the local authority are the purpose for which the proceeds⁸ of the appeal are to be applied, the date or dates on which the collection is to be conducted, the place at which, or the locality within which, the collection is to be conducted and such other matters as may be prescribed in regulations⁹.

Where it appears to the local authority that the collection is not a local, short term collection, or that the promoters or any of them have or has on any occasion breached any relevant regulations¹⁰ or been convicted of a relevant offence¹¹, it must serve on the promoters written notice of its decision to that effect and the reasons for its decision¹². The notice must also state that there is a right of appeal¹³ and the time within which such an appeal must be brought¹⁴.

Where a collection in a public place¹⁵ or a door to door collection¹⁶ is conducted otherwise than in accordance with the relevant statutory provisions¹⁷ and the collection is a local, short term collection but the promoters do not notify the local authority¹⁸, every promoter of the collection is guilty of an offence¹⁹.

1 As to the meaning of 'public charitable collection' see PARA 491.

2 As to the meaning of 'promoter' see PARA 492 note 3.

3 As to the meaning of 'local authority' see PARA 492 note 5.

4 Ie such period as is prescribed by regulations under the Charities Act 2006 s 63: see PARA 505.

5 Ie under the Charities Act 2006 s 50(4): see the text to notes 10-12. As to the service of notices see PARA 507.

6 Charities Act 2006 s 50(1) (not yet in force: see PARA 491 note 1).

7 Charities Act 2006 s 50(2) (not yet in force: see PARA 491 note 1).

8 As to the meaning of 'proceeds' see PARA 491 note 10.

9 Charities Act 2006 s 50(3) (not yet in force: see PARA 491 note 1).

10 Ie regulations prescribed under the Charities Act 2006 s 63: see PARA 505.

11 Ie an offence under the Charities Act 2006 s 53(2)(a)(i)-(v): see PARA 496.

12 Charities Act 2006 s 50(4) (not yet in force: see PARA 491 note 1).

13 Ie the right conferred by the Charities Act 2006 s 62(1): see PARA 504.

14 Charities Act 2006 s 50(5) (not yet in force: see PARA 491 note 1).

15 As to the meaning of 'collection in a public place' see PARA 491.

16 As to the meaning of 'door to door collection' see PARA 491.

17 Ie under the Charities Act 2006 s 48(1) (see PARA 492) or s 49(1) (see PARA 493), as the case may be.

18 Ie under the Charities Act 2006 s 50(1)(b) (see the text to notes 2-6).

19 Charities Act 2006 s 50(6) (not yet in force: see PARA 491 note 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 50(6) (not yet in force). As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/495. Applications for public collections certificates.

495. Applications for public collections certificates.

A person or persons proposing to promote public charitable collections¹ other than exempt collections² may apply to the Charity Commission³ for a public collections certificate in respect of those collections⁴. An application must be made within the specified⁵ period falling before the first of the collections is to commence, or before such later date as the Commission may allow in the case of that application⁶. The application must be made in such form as may be specified⁷, specify the period for which the certificate is sought (which must be no more than five years), and contain such other information as may be specified in regulations⁸. An application may be made for a public collections certificate in respect of a single collection⁹.

1 As to the meaning of 'public charitable collection' see PARA 491.

2 'Exempt collection' means a public charitable collection which is an exempt collection by virtue of the Charities Act 2006 s 50 (see PARA 494): s 51(7) (not yet in force: see PARA 491 note 1).

3 As to the Charity Commission see PARAS 538-572.

4 Charities Act 2006 s 51(1) (not yet in force: see PARA 491 note 1).

5 'Specified' means specified in regulations made by the Commission after consulting such persons or bodies of persons as it considers appropriate: Charities Act 2006 s 51(5) (not yet in force: see PARA 491 note 1). Such regulations must be published in such manner as the Commission considers appropriate, may make different provision for different cases or descriptions of case, and may make such incidental, supplementary, consequential or transitional provision as the Commission considers appropriate: s 51(6) (not yet in force: see PARA 491 note 1).

6 Charities Act 2006 s 51(2) (not yet in force: see PARA 491 note 1).

7 See note 5.

8 Charities Act 2006 s 51(3) (not yet in force: see PARA 491 note 1).

9 Charities Act 2006 s 51(4) (not yet in force: see PARA 491 note 1). The references to public charitable collections in Pt 3 Ch 1 (ss 45-66) in the context of such certificates are to be read accordingly: s 51(4) (not yet in force).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/496. Determination of applications and issue of public collections certificates.

496. Determination of applications and issue of public collections certificates.

On receiving an application for a public collections certificate¹ the Charity Commission² may make such inquiries³ as it thinks fit⁴ and must, after making any such inquiries, determine the application by either issuing a public collections certificate in respect of the collections, or refusing the application on one or more of the statutory grounds⁵.

A public collections certificate must specify such matters as may be prescribed, and is in force for the period specified in the application⁶ or such shorter period as the Commission thinks fit⁷. The Commission may, at the time of issuing a public collections certificate, attach to it such conditions as it thinks fit⁸.

Where the Commission refuses to issue a certificate, or attaches any condition to it, it must serve on the applicant written notice of its decision and the reasons for its decision⁹. That notice must also state that there is a right of appeal¹⁰ and the time within which such an appeal must be brought¹¹.

The Commission may refuse an application for a public collections certificate on the following grounds¹²:

- 394 (1) that the applicant has been convicted of a relevant offence¹³;
- 395 (2) where the applicant is a person other than a charitable, benevolent or philanthropic institution¹⁴ for whose benefit the collections are proposed to be conducted, that the Commission is not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collections¹⁵;
- 396 (3) that it appears to the Commission that the applicant, in promoting any other collection authorised under the Charities Act 2006¹⁶ or the Civic Government (Scotland) Act 1982¹⁷, failed to exercise the required due diligence¹⁸;
- 397 (4) that the Commission is not satisfied that the applicant will exercise the required due diligence in promoting the proposed collections¹⁹;
- 398 (5) that it appears to the Commission that the amount likely to be applied for charitable, benevolent or philanthropic purposes in consequence of the proposed collections would be inadequate, having regard to the likely amount of the proceeds²⁰ of the collections²¹;
- 399 (6) that it appears to the Commission that the applicant or any other person would be likely to receive an amount by way of remuneration in connection with the collections that would be excessive, having regard to all the circumstances²²;
- 400 (7) that the applicant has failed to provide information required for the purposes of the application for the certificate or a previous application, or in response to a request for information²³;
- 401 (8) that it appears to the Commission that information so provided to it by the applicant is false or misleading in a material particular²⁴;
- 402 (9) that it appears to the Commission that the applicant, or any person authorised by him, has breached any conditions attached to a previous public collections certificate, or has persistently breached any conditions attached to a permit²⁵;
- 403 (10) that it appears to the Commission that the applicant or any person authorised by him has on any occasion breached any provision of relevant regulations²⁶.

The Commission may request any applicant for a public collections certificate, or any person to whom such a certificate has been issued, to provide it with any information in his possession, or document in his custody or under his control, which is relevant to the exercise of any of its functions under the Charities Act 2006²⁷ in relation to public charitable collections²⁸.

- 1 le an application made in accordance with the Charities Act 2006 s 51: see PARA 495.
 - 2 As to the Charity Commission see PARAS 538-572.
 - 3 le whether under the Charities Act 2006 s 54 (see the text and note 28) or otherwise.
 - 4 Charities Act 2006 s 52(1) (not yet in force: see PARA 491 note 1).
 - 5 Charities Act 2006 s 52(2) (not yet in force: see PARA 491 note 1). As to the statutory grounds see s 53(1); and the text and notes 13-26.
 - 6 le in accordance with the Charities Act 2006 s 51(3)(b): see PARA 495. However, this is specifically stated to be subject to the statutory provisions for the withdrawal and variation of certificates under s 56 (see PARA 498): s 52(3)(b) (not yet in force: see PARA 491 note 1).
 - 7 Charities Act 2006 s 52(3) (not yet in force: see PARA 491 note 1).
 - 8 Charities Act 2006 s 52(4) (not yet in force: see PARA 491 note 1). Such conditions attached may include conditions prescribed for the purposes of s 52(4): s 52(5) (not yet in force: see PARA 491 note 1). The Commission must secure that the terms of any conditions attached under s 52(4) are consistent with the provisions of any regulations under s 63 (see PARA 505), whether or not prescribing conditions for the purposes of s 52(4): s 52(6) (not yet in force: see PARA 491 note 1).
 - 9 Charities Act 2006 s 52(7) (not yet in force: see PARA 491 note 1). As to the service of notices see PARA 507.
 - 10 le the right conferred by Charities Act 2006 s 57(1): see PARA 498.
 - 11 Charities Act 2006 s 52(8) (not yet in force: see PARA 491 note 1).
 - 12 Where an application for a certificate is made by more than one person, any reference to the applicant in the Charities Act 2006 s 53(1) or (2) (see the text and notes 13-26) is to be construed as a reference to any of the applicants: s 53(3) (not yet in force: see PARA 491 note 1).
 - 13 Charities Act 2006 s 53(1)(a) (not yet in force: see PARA 491 note 1). A 'relevant offence' is an offence: (1) under the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 s 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 851, 852); (2) under the House to House Collections Act 1939 (see PARAS 461-470); (3) under the Civic Government (Scotland) Act 1982 s 119; (4) under the Charities Act 2006 Pt 3 Ch 1 (ss 45-66) (see PARAS 491-507); (5) involving dishonesty; or (6) of a kind the commission of which would, in the opinion of the Commission, be likely to be facilitated by the issuing to the applicant of a public collections certificate: s 53(2)(a), (8) (not yet in force: see PARA 491 note 1).
 - 14 'Charitable, benevolent or philanthropic institution' means a charity or an institution (other than a charity) which is established for charitable, benevolent, or philanthropic purposes: Charities Act 2006 s 47(1) (not yet in force: see PARA 491 note 1). As to the meaning of 'charitable, benevolent, or philanthropic purposes' see PARA 491 note 11.
 - 15 Charities Act 2006 s 53(1)(b) (not yet in force: see PARA 491 note 1).
 - 16 A reference to a collection authorised under the Charities Act 2006 Pt 3 Ch 1 is a reference to a public charitable collection that is conducted in accordance with s 48 (see PARA 492) or s 49 (see PARA 493), or is an exempt collection by virtue of s 50 (see PARA 494): s 53(7) (not yet in force: see PARA 491 note 1).
 - 17 le under the Civic Government (Scotland) Act 1982 s 119.
 - 18 Charities Act 2006 s 53(1)(c) (not yet in force: see PARA 491 note 1). The 'required due diligence' is due diligence: (1) to secure that persons authorised by the applicant to act as collectors for the purposes of the collection were (or will be) fit and proper persons; (2) to secure that such persons complied (or will comply) with the provisions of regulations under s 63(1)(b) (see PARA 505) or, as the case may be, the Civic Government (Scotland) Act 1982 s 119; or (3) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised: Charities Act 2006 s 53(2)(b) (not yet in force: see PARA 491 note 1). Subject to s 53(5), (6), the reference to badges or certificates of authority is a reference to badges or certificates of authority in a form prescribed by regulations under s 63(1)(b) (see PARA 505) or, as the case may be, the Civic Government (Scotland) Act 1982 s 119: Charities Act 2006 s 53(4) (not yet in force: see PARA 491 note 1).
- The due diligence requirement applies to the conduct of the applicant (or any of the applicants) in relation to any public charitable collection authorised under the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 s 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 851, 852) or under the House to

House Collections Act 1939 (see PARAS 461-470) as it applies to his conduct in relation to a collection authorised under the Charities Act 2006 Pt 3 Ch 1 (see note 16) but subject to the modifications set out in s 53(6): s 53(5) (not yet in force: see PARA 491 note 1). In the case of a collection authorised under regulations made under the Police, Factories, Etc (Miscellaneous Provisions) Act 1916, the reference in the Charities Act 2006 s 53(2)(b) to regulations under s 63(1)(b) is to be construed as a reference to the regulations under which the collection in question was authorised, and the reference therein to badges or certificates of authority is to be construed as a reference to any written authority provided to a collector pursuant to those regulations: s 53(6)(a) (not yet in force: see PARA 491 note 1). In the case of a collection authorised under the House to House Collections Act 1939, the reference in the Charities Act 2006 s 53(2)(b) to regulations under s 63(1)(b) is to be construed as a reference to regulations under the House to House Collections Act 1939 s 4 (see PARA 465), and the reference therein to badges or certificates of authority is to be construed as a reference to badges or certificates of authority in a form prescribed by such regulations: Charities Act 2006 s 53(6)(b) (not yet in force: see PARA 491 note 1).

19 Charities Act 2006 s 53(1)(d) (not yet in force: see PARA 491 note 1). As to the required due diligence see note 18.

20 As to the meaning of 'proceeds' see PARA 491 note 10.

21 Charities Act 2006 s 53(1)(e) (not yet in force: see PARA 491 note 1).

22 Charities Act 2006 s 53(1)(f) (not yet in force: see PARA 491 note 1).

23 Charities Act 2006 s 53(1)(g) (not yet in force: see PARA 491 note 1). A request for information is made under s 54(1) (see the text and notes 28).

24 Charities Act 2006 s 53(1)(h) (not yet in force: see PARA 491 note 1).

25 Charities Act 2006 s 53(1)(i) (not yet in force: see PARA 491 note 1). A permit is issued under s 59 (see PARAS 500-503).

26 Charities Act 2006 s 53(1)(j) (not yet in force: see PARA 491 note 1). Regulations are made under s 63(1)(b) (see PARA 505).

27 Ie under the Charities Act 2006 Pt 3 Ch 1 (ss 45-66) (see PARA 491 et seq).

28 Charities Act 2006 s 54(1) (not yet in force: see PARA 491 note 1). This provision does not affect the power conferred on the Commission by the Charities Act 1993 s 9 (see PARA 557): Charities Act 2006 s 54(2) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/497. Transfer of public collections certificate between trustees of unincorporated charity.

497. Transfer of public collections certificate between trustees of unincorporated charity.

A public collections certificate¹ is not transferable² except that one or more individuals to whom a public collections certificate has been issued (the 'holders') may apply to the Charity Commission³ for a direction that the certificate be transferred to one or more other individuals (the 'recipients')⁴. Such an application must be in such form as may be specified⁵, and contain such information as may be specified⁶. The Commission may direct that the certificate be transferred if it is satisfied that each of the holders is or was a trustee of a charity which is not a body corporate, each of the recipients is a trustee of that charity and consents to the transfer, and the charity trustees⁷ consent to the transfer⁸.

Where the Commission refuses to direct that a certificate be transferred, it must serve on the holders written notice of its decision and the reasons for its decision⁹. The notice must also state that there is a right of appeal¹⁰ and the time within which such an appeal must be brought¹¹.

- 1 As to the meaning of 'public collections certificate' see PARA 492 note 4. As to public collections certificates generally see PARA 495.
- 2 Charities Act 2006 s 55(7) (not yet in force: see PARA 491 note 1).
- 3 As to the Charity Commission see PARAS 538-572.
- 4 Charities Act 2006 s 55(1) (not yet in force: see PARA 491 note 1).
- 5 'Specified' means specified in regulations made by the Commission after consulting such persons or bodies of persons as it considers appropriate and such regulations must be published in such manner as the Commission considers appropriate, may make different provision for different cases or descriptions of case, and may make such incidental, supplementary, consequential or transitional provision as the Commission considers appropriate: Charities Act 2006 s 51(5), (6); applied by s 55(6) (not yet in force: see PARA 491 note 1).
- 6 Charities Act 2006 s 55(2) (not yet in force: see PARA 491 note 1).
- 7 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 8 Charities Act 2006 s 55(3) (not yet in force: see PARA 491 note 1).
- 9 Charities Act 2006 s 55(4) (not yet in force: see PARA 491 note 1). As to the service of notices see PARA 507.
- 10 Ie under the Charities Act 2006 57(2): see PARA 499.
- 11 Charities Act 2006 s 55(5) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/498. Withdrawal, suspension and variation of public collections certificates.

498. Withdrawal, suspension and variation of public collections certificates.

In certain circumstances¹, the Charity Commission² may withdraw a public collections certificate³, suspend such a certificate, attach any condition, or further condition, to such a certificate, or vary any existing condition of such a certificate⁴. The circumstances are:

- 404 (1) where the Commission has reason to believe there has been a change in the circumstances which prevailed at the time when it issued the certificate⁵ and is of the opinion that, if the application for the certificate had been made in the new circumstances, it would not have issued the certificate or would have issued it subject to different or additional conditions⁶;
- 405 (2) where the holder of a certificate has unreasonably refused to provide any information or document in response to a request under the Commission's statutory power to request information in relation to a public collections certificate⁷, or the Commission has reason to believe that information provided to it by the holder of a certificate (or, where there is more than one holder, by any of them) for the purposes of the application for the certificate, or in response to such a request, was false or misleading in a material particular⁸;
- 406 (3) where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a certificate, or that a breach of such a condition is continuing⁹.

Any such condition imposed at any time by the Commission, whether by attaching a new condition to the certificate or by varying an existing condition, must be one that it would be

appropriate for the Commission to attach to the certificate¹⁰ if the holder was applying for it in the circumstances prevailing at that time¹¹.

Where the Commission withdraws or suspends a certificate, attaches a condition to a certificate, or varies an existing condition of a certificate, it must serve on the holder written notice of its decision and the reasons for its decision¹². That notice must also state the right of appeal¹³ and the time within which such an appeal must be brought¹⁴. However, if the Commission considers that the interests of the public require a decision by it to withdraw or vary a certificate to have immediate effect, and includes a statement to that effect and the reasons for it in the notice so served¹⁵ the decision takes effect when that notice is served on the holder¹⁶. In any other case the certificate continues to have effect as if it had not been withdrawn or suspended or (as the case may be) as if the condition had not been attached or varied until the time for bringing an appeal has expired, or if such an appeal is duly brought, until the determination or abandonment of the appeal¹⁷.

A certificate suspended under the above provisions, subject to any appeal and any withdrawal of the certificate, remains suspended until such time as the Commission may by notice direct that the certificate is again in force, or the end of the period of six months beginning with the date on which the suspension takes effect, whichever is the sooner¹⁸.

1 See heads (1)-(3) in the text.

2 As to the Charity Commission see PARAS 538-572.

3 As to the meaning of 'public collections certificate' see PARA 492 note 4. As to public collections certificates generally see PARA 495.

4 Charities Act 2006 s 56(1) (not yet in force: see PARA 491 note 1). The exercise by the Commission of the power to suspend, attach conditions or vary existing conditions on one occasion does not prevent it from exercising any of the powers conferred by s 56(1) on a subsequent occasion: s 56(6) (not yet in force: see PARA 491 note 1).

5 Or, where the Commission has previously exercised its power under the Charities Act 2006 s 56(1) in relation to the certificate in question, at the time when it last exercised any of those powers: s 56(6) (not yet in force: see PARA 491 note 1).

6 Charities Act 2006 s 56(2) (not yet in force: see PARA 491 note 1).

7 Ie under the Charities Act 2006 s 54(1): see PARA 496 note 28.

8 Charities Act 2006 s 56(3) (not yet in force: see PARA 491 note 1).

9 Charities Act 2006 s 56(4) (not yet in force: see PARA 491 note 1).

10 Ie under the Charities Act 2006 s 52(4): see PARA 496.

11 Charities Act 2006 s 52(5) (not yet in force: see PARA 491 note 1).

12 Charities Act 2006 s 56(7) (not yet in force: see PARA 491 note 1). As to the service of notices see PARA 507.

13 Ie under the Charities Act 2006 s 57(2): see PARA 499.

14 Charities Act 2006 s 56(8) (not yet in force: see PARA 491 note 1).

15 Ie under the Charities Act 2006 s 56(7): see the text to note 12.

16 Charities Act 2006 s 56(9) (not yet in force: see PARA 491 note 1).

17 Charities Act 2006 s 56(10) (not yet in force: see PARA 491 note 1).

18 Charities Act 2006 s 56(11) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/499. Appeals against decisions of the Charity Commission relating to public collections certificates.

499. Appeals against decisions of the Charity Commission relating to public collections certificates.

A person who has duly applied to the Charity Commission¹ for a public collections certificate² may appeal to the Tribunal³ against a decision of the Commission⁴ to refuse to issue the certificate, or to attach any condition to it⁵. A person to whom a public collections certificate has been issued may appeal to the Tribunal against a decision of the Commission not to direct that the certificate be transferred between trustees⁶. Such a person may also appeal to the Tribunal against a decision of the Commission⁷ to withdraw or suspend the certificate, to attach a condition to the certificate, or to vary an existing condition of the certificate⁸.

The Attorney General may appeal to the Tribunal against a decision of the Commission: (1) to issue, or to refuse to issue, a certificate; (2) to attach, or not to attach, any condition to a certificate⁹; (3) to direct, or not to direct, that a certificate be transferred between trustees¹⁰; (4) to withdraw or suspend, or not to withdraw or suspend, a certificate; or (5) to vary, or not to vary, an existing condition of a certificate¹¹.

In determining such an appeal, the Tribunal must consider afresh the decision appealed against, and may take into account evidence which was not available to the Commission¹². The Tribunal may dismiss the appeal, quash the decision, or substitute for the decision another decision of a kind that the Commission could have made¹³. In any case, the Tribunal may give such directions as it thinks fit, having regard to the provisions of the Charities Act 2006 relating to public charitable collections¹⁴ and associated regulations¹⁵. If the Tribunal quashes the decision, it may remit the matter to the Commission, either generally or for determination in accordance with a finding made or direction given by the Tribunal¹⁶.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'public collections certificate' see PARA 492 note 4. As to public collections certificates generally see PARA 495.

3 'Tribunal', in relation to any appeal under the Charities Act 2006 s 57, means: (1) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the appeal; or (2) the First-tier Tribunal, in any other case: s 57(8) (added by SI 2009/1834). See **ADMINISTRATIVE LAW**.

4 Ie under the Charities Act 2006 s 52: see PARA 496.

5 Charities Act 2006 s 57(1) (not yet in force (see PARA 491 note 1); amended by SI 2009/1834).

6 Charities Act 2006 s 57(2) (not yet in force: see PARA 491 note 1). A certificate is transferred under s 55 (see PARA 497).

7 Ie under the Charities Act 2006 s 56: see PARA 498.

8 Charities Act 2006 s 57(3) (not yet in force: see PARA 491 note 1).

9 Ie under the Charities Act 2006 s 52 (see PARA 496) or s 56 (see PARA 498).

10 Ie under the Charities Act 2006 s 55 (see PARA 497).

11 Charities Act 2006 s 57(4) (not yet in force: see PARA 491 note 1).

12 Charities Act 2006 s 57(5) (not yet in force: see PARA 491 note 1).

13 Charities Act 2006 s 57(6) (not yet in force: see PARA 491 note 1).

14 Ie under the Charities Act 2006 Pt 3 Ch 1 (ss 45-66) (see PARA 491 et seq).

15 Charities Act 2006 s 57(6) (not yet in force: see PARA 491 note 1). The regulations are those made under s 63 (see PARA 505).

16 Charities Act 2006 s 57(7) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/500. Applications for permits to conduct collections in public places.

500. Applications for permits to conduct collections in public places.

A person or persons proposing to promote a collection in a public place¹ other than an exempt collection² in the area of a local authority³ may apply to the authority for a permit to conduct that collection⁴. The application must be made within the prescribed⁵ period falling before the day, or the first of the days, on which the collection is to take place⁶, save that where an application has been made for a public collections certificate⁷ in respect of the collection and either the certificate application has not been determined by the end of this period, or the certificate application has been determined by the issue of such a certificate but at a time when there is insufficient time remaining for the permit application to be made by the end of that period, the permit application must be made as early as practicable before the day, or the first of the days, on which the collection is to take place⁸.

The application must: (1) specify the date or dates in respect of which it is desired that the permit, if issued, should have effect, which in the case of two or more dates must not span a period of more than 12 months; (2) be accompanied by a copy of the public collections certificate in force in respect of the proposed collection⁹; and (3) contain such information as may be prescribed¹⁰.

1 As to the meaning of 'collection in a public place' see PARA 491.

2 As to exempt collections see the Charities Act 2006 s 50; and PARA 494.

3 As to the meaning of 'local authority' see PARA 492 note 5.

4 Charities Act 2006 s 58(1) (not yet in force: see PARA 491 note 1).

5 As to the meaning of 'prescribed' see PARA 493 note 5. See also PARA 505.

6 Charities Act 2006 s 58(2) (not yet in force: see PARA 491 note 1).

7 Ie under the Charities Act 2006 s 51: see PARA 495. As to the meaning of 'public collections certificate' see PARA 492 note 4.

8 Charities Act 2006 s 58(4) (not yet in force: see PARA 491 note 1).

9 Ie under the Charities Act 2006 s 52: see PARA 496.

10 Charities Act 2006 s 58(3) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/501. Determination of applications and issue of permits.

501. Determination of applications and issue of permits.

On receiving an application for a permit¹ in respect of a collection in a public place², a local authority³ must determine the application within the prescribed period⁴ by either issuing a permit in respect of the collection or refusing the application on the statutory ground⁵.

Where a local authority issues such a permit, it has effect in respect of the date or dates specified⁶ in the application⁷. At the time of issuing a permit under these provisions, a local authority may attach to it such of the following conditions as it thinks fit, having regard to the local circumstances of the collection⁸: (1) conditions specifying the day of the week, date, time or frequency of the collection⁹; (2) conditions specifying the locality or localities within their area in which the collection may be conducted¹⁰; (3) conditions regulating the manner in which the collection is to be conducted¹¹; (4) such other conditions as may be prescribed for this purpose¹². A local authority must secure that the terms of any conditions so attached are consistent with the provisions of any relevant regulations¹³.

Where a local authority refuses to issue a permit, or attach any condition to it, the authority must serve on the applicant written notice of its decision and the reasons for its decision¹⁴. The notice must also state that there is a right of appeal¹⁵ and the time within which such an appeal must be brought¹⁶.

1 In accordance with the Charities Act 2006 s 58: see PARA 500.

2 As to the meaning of 'collection in a public place' see PARA 491.

3 As to the meaning of 'local authority' see PARA 492 note 5.

4 In such period as is prescribed by regulations under the Charities Act 2006 s 63: see PARA 505.

5 Charities Act 2006 s 59(1) (not yet in force: see PARA 491 note 1). As to the statutory ground for refusal see s 60(1); and PARA 502.

6 In accordance with the Charities Act 2006 s 58(3)(a) (see PARA 500 head (1)).

7 Charities Act 2006 s 59(2) (not yet in force: see PARA 491 note 1). However, this is subject to any subsequent withdrawal or modification under s 61 (see PARA 503): s 59(2) (not yet in force).

8 Charities Act 2006 s 59(3) (not yet in force: see PARA 491 note 1).

9 Charities Act 2006 s 59(3)(a) (not yet in force: see PARA 491 note 1).

10 Charities Act 2006 s 59(3)(b) (not yet in force: see PARA 491 note 1).

11 Charities Act 2006 s 59(3)(c) (not yet in force: see PARA 491 note 1).

12 Charities Act 2006 s 59(3)(d) (not yet in force: see PARA 491 note 1).

13 Charities Act 2006 s 59(4) (not yet in force: see PARA 491 note 1). Relevant regulations are those made under s 63 (see PARA 505), whether or not prescribing conditions for the purposes of s 59(3) (see the text to notes 8-12): s 59(4) (not yet in force).

14 Charities Act 2006 s 59(5) (not yet in force: see PARA 491 note 1). As to the service of notices see PARA 507.

15 In conferred by the Charities Act 2006 s 62(2): see PARA 504.

16 Charities Act 2006 s 59(6) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/502. Refusal of permits.

502. Refusal of permits.

The only ground on which a local authority¹ may refuse an application for a permit² to conduct a collection in a public place³ is that it appears to it that the collection would cause undue inconvenience to members of the public by reason of: (1) the day or the week or the date on or in which; (2) the time at which; (3) the frequency with which; or (4) the locality or localities in which, it is proposed to be conducted⁴.

In making this decision, a local authority may have regard to the fact, where it is the case, that the collection is proposed to be conducted wholly or partly in a locality in which another collection in a public place is already authorised to be conducted under the Charities Act 2006 Pt 3 Ch 1⁵ and on a day on which that other collection is already so authorised, or on the day falling immediately before, or immediately after, any such day⁶. However, a local authority must not have regard to these matters if it appears to it that the proposed collection would be conducted only in one location, which is on land to which members of the public would have access only by virtue of the express or implied permission of the occupier⁷ of the land or by virtue of any enactment, and that the occupier of the land consents to that collection being conducted there⁸.

1 As to the meaning of 'local authority' see PARA 492 note 5.

2 As to such permits see PARA 500.

3 As to the meaning of 'collection in a public place' see PARA 491.

4 Charities Act 2006 s 60(1) (not yet in force: see PARA 491 note 1).

5 A reference to a collection in a public place authorised under the Charities Act 2006 Pt 3 Ch 1 (ss 45-66) is a reference to a collection in a public place that is conducted in accordance with the Charities Act 2006 s 48 (see PARA 492), or is an exempt collection by virtue of s 50 (see PARA 494): s 60(4) (not yet in force: see PARA 491 note 1).

6 Charities Act 2006 s 60(2) (not yet in force: see PARA 491 note 1).

7 'Occupier' in relation to unoccupied land means the person entitled to occupy it: Charities Act 2006 s 60(3) (not yet in force: see PARA 491 note 1).

8 Charities Act 2006 s 60(3) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/503. Withdrawal and modification of permits.

503. Withdrawal and modification of permits.

In certain circumstances¹, a local authority² which has issued a permit³ may withdraw the permit, attach any condition, or further condition, to the permit, or vary any existing condition of the permit⁴. The circumstances are:

- 407 (1) where the local authority has reason to believe that there has been a change in the circumstances which prevailed at the time when it issued the permit and is of the opinion that, if the application for the permit had been made in the new circumstances, it would not have issued the permit or would have issued it subject to different or additional conditions⁵;
- 408 (2) where the local authority has reason to believe that any information provided to it by the holder of a permit (or, where there is more than one holder, by any of them) for the purposes of the application for the permit was false or misleading in a material particular⁶;
- 409 (3) where the local authority has reason to believe that there has been or is likely to be a breach of any condition of a permit issued by it, or that a breach of such a condition is continuing⁷.

Any such condition imposed at any time by a local authority, whether by attaching a new condition to the permit or by varying an existing condition, must be one that it would be appropriate for the authority to attach to the permit⁸ if the holder was applying for it in the circumstances prevailing at that time⁹.

Where a local authority withdraws a permit, attaches a condition to a permit, or varies an existing condition of a permit, it must serve on the holder written notice of its decision and the reasons for its decision¹⁰. The notice must also state that there is a right of appeal¹¹ and the time within which such an appeal must be brought¹². Where a local authority withdraws a permit it must send a copy of its decision and the reasons for it to the Charity Commission¹³. Where a local authority withdraws a permit, attaches any condition to a permit, or varies an existing condition of a permit, the permit continues to have effect as if it had not been withdrawn or, as the case may be, as if the condition had not been attached or varied until the time for bringing an appeal has expired or, if such an appeal is duly brought, until the determination or abandonment of the appeal¹⁴.

1 See heads (1)-(3) in the text.

2 As to the meaning of 'local authority' see PARA 492 note 5.

3 Ie under the Charities Act 2006 s 59: see PARA 501. As to such permits see PARA 500.

4 Charities Act 2006 s 61(1) (not yet in force: see PARA 491 note 1). The exercise by a local authority of the power to attach conditions or vary existing conditions on one occasion does not prevent it from exercising any of the powers conferred by s 61(1) on a subsequent occasion: s 61(6) (not yet in force: see PARA 491 note 1).

5 Charities Act 2006 s 61(2) (not yet in force: see PARA 491 note 1).

6 Charities Act 2006 s 61(3) (not yet in force: see PARA 491 note 1).

7 Charities Act 2006 s 61(4) (not yet in force: see PARA 491 note 1).

8 Ie under the Charities Act 2006 s 59(3): see PARA 501.

9 Charities Act 2006 s 61(5) (not yet in force: see PARA 491 note 1).

10 Charities Act 2006 s 61(7) (not yet in force: see PARA 491 note 1). As to the service of notices see PARA 507.

11 Ie under the Charities Act 2006 s 62(3): see PARA 504.

12 Charities Act 2006 s 61(8) (not yet in force: see PARA 491 note 1).

13 Charities Act 2006 s 61(9) (not yet in force: see PARA 491 note 1). As to the Charity Commission see PARAS 538-572.

14 Charities Act 2006 s 61(10) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/504. Appeals against decisions of local authority.

504. Appeals against decisions of local authority.

A person who, in relation to a public charitable collection¹, has duly notified a local authority² of the matters necessary for an exempt collection³ may appeal to a magistrates' court against a decision of the local authority⁴ that the collection is not a local, short-term collection⁵, or that the promoters⁶ or any of them has breached any relevant regulations⁷ or been convicted of a relevant offence⁸.

A person who has duly applied to a local authority for a permit to conduct a collection in a public place in the authority's area may appeal to a magistrates' court against a decision of the authority⁹ to refuse to issue a permit, or to attach any condition to it¹⁰.

A person to whom a permit has been issued may appeal to a magistrates' court against a decision of the local authority¹¹ to withdraw the permit, to attach a condition to the permit, or to vary an existing condition of the permit¹².

Such an appeal must be by way of complaint for an order and the Magistrates' Courts Act 1980 applies to the proceedings¹³. Any such appeal must be brought within 14 days of the date of service on the person in question of the relevant notice¹⁴ and for these purposes an appeal is taken to be brought when the complaint is made¹⁵. An appeal against the decision of a magistrates' court on such an appeal may be brought to the Crown Court¹⁶.

On an appeal to a magistrates' court or the Crown Court, the court may confirm, vary or reverse the local authority's decision and generally give such directions as it thinks fit, having regard to the relevant provisions of the Charities Act 2006¹⁷ and associated regulations¹⁸. If the appeal relates to exemption collection status¹⁹, such directions may include a direction that the collection may be conducted on the date or dates notified by the promoters²⁰ or on such other date or dates as may be specified in the direction, and if so conducted the collection is to be regarded as one that is an exempt collection²¹.

It is the duty of the local authority to comply with any such directions given by the court, but the authority need not comply with any directions given by a magistrates' court until the time for bringing an appeal to the Crown Court has expired or, if such an appeal is duly brought, until the determination or abandonment of the appeal²².

1 As to the meaning of 'public charitable collection' see PARA 491.

2 As to the meaning of 'local authority' see PARA 492 note 5.

3 Ie under the Charities Act 2006 s 50(3): see PARA 494.

4 Ie under the Charities Act 2006 s 50(4): see PARA 494.

5 As to local, short-term collections see PARA 494.

6 As to the meaning of 'promoter' see PARA 492 note 3.

7 Ie under the Charities Act 2006 s 63: see PARA 505.

8 Charities Act 2006 s 62(1) (not yet in force: see PARA 491 note 1). A relevant offence is an offence under s 53(2)(a)(i)-(v): see PARA 496.

- 9 le under the Charities Act 2006 s 59: see PARA 501.
- 10 Charities Act 2006 s 62(2) (not yet in force: see PARA 491 note 1).
- 11 le under the Charities Act 2006 s 61: see PARA 503.
- 12 Charities Act 2006 s 62(3) (not yet in force: see PARA 491 note 1).
- 13 Charities Act 2006 s 62(4) (not yet in force: see PARA 491 note 1). See **MAGISTRATES** vol 29(2) (Reissue) PARA 681.
- 14 le under the Charities Act 2006 s 50(4) (see PARA 494), s 59(5) (see PARA 501) or s 61(7) (see PARA 503) as the case may be. As to the service of notices see PARA 507.
- 15 Charities Act 2006 s 62(5) (not yet in force: see PARA 491 note 1).
- 16 Charities Act 2006 s 62(6) (not yet in force: see PARA 491 note 1). As to appeals from magistrates' courts generally see **MAGISTRATES** vol 29(2) (Reissue) PARA 882 et seq.
- 17 le the provisions of the Charities Act 2006 Pt 3 Ch 1 (ss 45-66): see PARA 491 et seq.
- 18 Charities Act 2006 s 62(7) (not yet in force: see PARA 491 note 1). As to regulations see s 63; and PARA 505.
- 19 le under the Charities Act 2006 s 50(4): see PARA 494.
- 20 le in accordance with the Charities Act 2006 s 50(3)(b): see PARA 494.
- 21 Charities Act 2006 s 62(8) (not yet in force: see PARA 491 note 1). As to exempt collections see s 50; and PARA 494.
- 22 Charities Act 2006 s 62(9) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/505. Regulations.

505. Regulations.

The Minister¹ may make regulations²:

- 410 (1) prescribing the matters which a local authority³ is to take into account in determining whether a collection is local in character for the purposes of determining whether a collection is local, short-term collection⁴;
- 411 (2) for the purpose of regulating the conduct of public charitable collections⁵;
- 412 (3) prescribing anything falling to be prescribed by virtue of any provision of the Charities Act 2006 relating to public charitable collections⁶.

The matters which may be prescribed by regulations under head (1) above include the extent of the area within which the appeal is to be conducted, whether the appeal forms part of a series of appeals, the number of collectors⁷ making the appeal and whether they are acting for remuneration or otherwise, the financial resources (of any description) of any charitable, benevolent or philanthropic institution⁸ for whose benefit the appeal is to be conducted, and where the promoters live or have any place of business⁹.

Regulations under head (2) above may make provision:

- 413 (a) about the keeping and publication of accounts¹⁰;
- 414 (b) for the prevention of annoyance to members of the public¹¹;

- 415 (c) with respect to the use by collectors of badges and certificates of authority, or badges incorporating such certificates, including, in particular, provision prescribing the form of such badges and certificates, requiring a collector, on request, to permit his badge, or any certificate of authority held by him of the purposes of the collection, to be inspected by a constable or a duly authorised officer of a local authority, or by an occupier of any premises visited by him in the course of the collection¹²;
- 416 (d) for prohibiting persons under a prescribed age from acting as collectors, and prohibiting others from causing them so to act¹³.

Such regulations may provide that any failure to comply with a specified provision of the regulations is to be an offence punishable on summary conviction by a fine¹⁴.

Before making regulations under these provisions, the Minister must consult such persons or bodies of persons as he considers appropriate¹⁵.

1 As to the Minister see PARA 580.

2 Charities Act 2006 s 63(1) (not yet in force: see PARA 491 note 1).

3 As to the meaning of 'local authority' see PARA 492 note 5.

4 Charities Act 2006 s 63(1)(a) (not yet in force: see PARA 491 note 1). As to local, short-term collections see PARA 494.

5 Charities Act 2006 s 63(1)(b) (not yet in force: see PARA 491 note 1). As to the meaning of 'public charitable collection' see PARA 491.

6 Charities Act 2006 s 63(1)(c) (not yet in force: see PARA 491 note 1). The relevant provisions of the Charities Act 2006 are in Pt 3 Ch 1 (ss 45-66): see PARA 491 et seq.

7 As to the meaning of 'collector' see PARA 491 note 15.

8 As to the meaning of 'charitable, benevolent or philanthropic institution' see PARA 496 note 14.

9 Charities Act 2006 s 63(2) (not yet in force: see PARA 491 note 1). However, this does not prejudice the generality of head (1) in the text: s 63(4) (not yet in force: see PARA 491 note 1).

10 Charities Act 2006 s 63(3)(a) (not yet in force: see PARA 491 note 1). However, this does not prejudice the generality of head (2) in the text: s 63(4) (not yet in force: see PARA 491 note 1).

11 Charities Act 2006 s 63(3)(b) (not yet in force: see PARA 491 note 1). See note 10.

12 Charities Act 2006 s 63(3)(c) (not yet in force: see PARA 491 note 1). See note 10.

13 Charities Act 2006 s 63(3)(d) (not yet in force: see PARA 491 note 1). See note 10.

14 Charities Act 2006 s 63(5) (not yet in force: see PARA 491 note 1). The fine must not exceed level 2 on the standard scale: s 63(5) (not yet in force). As to the standard scale see PARA 308.

15 Charities Act 2006 s 63(6) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/506. Offences.

506. Offences.

A person commits an offence if, in connection with any charitable appeal¹, he displays or uses a prescribed badge² or prescribed certificate of authority³ which is not for the time being held by him for the purposes of the appeal pursuant to regulations⁴, or any badge or article, or any certificate or other document, so nearly resembling a prescribed badge or, as the case may be, a prescribed certificate of authority as to be likely to deceive a member of the public⁵.

A person commits an offence if he knowingly or recklessly furnishes any information which is false or misleading in a material particular, for the purposes of: (1) an application for a public collections certificate⁶; (2) an application for a permit to conduct a collection in a public place⁷; (3) conducting a door to door collection⁸; or (4) obtaining an exemption⁹ for a local, short-term collection¹⁰.

Where any offence under the provisions for public charitable collections in the Charities Act 2006¹¹ or any regulations made thereunder is committed by a body corporate, and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director¹², manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly¹³.

1 As to the meaning of 'charitable appeal' see PARA 491.

2 'Prescribed badge' means a badge in such form as may be prescribed by regulations under the Charities Act 2006 s 63 (see PARA 505): ss 47(1), 64(4) (not yet in force: see PARA 491 note 1).

3 'Prescribed certificate of authority' means a certificate of authority in such form as may be prescribed by regulations under the Charities Act 2006 s 63 (see PARA 505): ss 47(1), 64(4) (not yet in force: see PARA 491 note 1).

4 Ie regulations under the Charities Act 2006 s 63: see PARA 505.

5 Charities Act 2006 s 64(1) (not yet in force: see PARA 491 note 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 64(3) (not yet in force: see PARA 491 note 1). As to the standard scale see PARA 308.

6 Ie under the Charities Act 2006 s 51: see PARA 495.

7 Ie under the Charities Act 2006 s 58: see PARA 500.

8 Ie under the Charities Act 2006 s 49: see PARA 493.

9 Ie under the Charities Act 2006 s 50: see PARA 494.

10 Charities Act 2006 s 64(2) (not yet in force: see PARA 491 note 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 64(3) (not yet in force: see PARA 491 note 1). As to the standard scale see PARA 308.

11 Ie the Charities Act 2006 Pt 3 Ch 1 (ss 45-66): see PARA 491 et seq.

12 'Director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: Charities Act 2006 s 65(2) (not yet in force: see PARA 491 note 1).

13 Charities Act 2006 s 65(1) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/9. CONTROL OF CHARITABLE FUND RAISING/(5) CONTROLS UNDER THE CHARITIES ACT 2006/507. Service of documents.

507. Service of documents.

Any notice required to be served under the provisions of the Charities Act 2006 relating to public charitable collections¹ may be served on a person, other than a body corporate, by delivering it to that person, by leaving it at his last known address in the United Kingdom², or by sending it by post to him at that address³. Such a notice may be served on a body corporate by delivering it or sending it by post to the registered or principal office of the body in the United Kingdom or, if it has no such office in the United Kingdom, to any place in the United Kingdom where it carries on business or conducts its activities, as the case may be⁴. Such a notice may also be served on a person, including a body corporate, by sending it by post to that person at an address notified by that person for these purposes to the person or persons by whom it is required to be served⁵.

1 le under the Charities Act 2006 Pt 3 Ch 1 (ss 45-66); see PARA 491 et seq.

2 As to the meaning of 'United Kingdom' see PARA 187 note 17.

3 Charities Act 2006 s 66(1), (2) (not yet in force: see PARA 491 note 1).

4 Charities Act 2006 s 66(3) (not yet in force: see PARA 491 note 1).

5 Charities Act 2006 s 66(4) (not yet in force: see PARA 491 note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(1) THE CROWN/508. The Crown as protector of charitable trusts.

10. JURISDICTION OVER CHARITIES

(1) THE CROWN

508. The Crown as protector of charitable trusts.

The Crown as *parens patriae* is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern¹. The Attorney General, who represents the Crown for all forensic purposes, is accordingly the proper person to take proceedings on behalf of and to protect charities².

The Crown also, acting through such persons as the Crown may nominate³, exercises a visitatorial jurisdiction over certain charitable corporations⁴.

1 *A-G v Brown* (1818) 1 Swan 265 at 291 per Lord Eldon LC; *A-G v Compton* (1842) 1 Y & C Ch Cas 417 at 427 per Knight Bruce V-C. As to the Crown as *parens patriae* see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 309.

2 *Eyre v Countess of Shaftsbury* (1724) 2 P Wms 103 at 118 per Lord Macclesfield; *Wellbeloved v Jones* (1822) 1 Sim & St 40 at 43 per Leach V-C; *A-G v Magdalen College, Oxford* (1854) 18 Beav 223 at 241 per Romilly MR; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369; *Wallis v Solicitor General for New Zealand* [1903] AC 173 at 182, PC; *Strickland v Weldon* (1885) 28 ChD 426; *Re Belling, Enfield London Borough Council v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105; and see PARA 598 et seq.

3 In *R v HM the Queen in Council, ex p Vijayatunga* [1990] 2 QB 444, sub nom *R v University of London Visitor, ex p Vijayatunga* [1989] 2 All ER 843, CA, the Crown had nominated a committee of the Privy Council. See further PARA 520 note 1 per Samuel Romilly.

4 See PARAS 513, 522-523.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(1) THE CROWN/509. Gift of charity generally, without trust.

509. Gift of charity generally, without trust.

When no trust is created and property is given to charity generally, that is to say, where no trustees are nominated and the charitable objects are not defined, the duty of disposing of the property devolves on the Crown, as constitutional trustee¹. Thus, in the case of an assurance, devise or bequest to charity², or to the poor³, simpliciter, or where the testator intended but failed to name the objects of his bounty⁴, the disposition of the property is made by the Crown in its character of *parens patriae*, not by means of a scheme settled by the court. So also, a legacy in exoneration of the National Debt⁵, or to 'my country England'⁶, or a legacy to an institution dissolved after the testator's death but before payment⁷, or to a non-existent institution⁸, is disposable by the Crown. The result is the same as when a charitable purpose is carried out by the court, though the procedure differs⁹.

The power of the Crown to dispose of charitable gifts under the royal sign manual has been delegated to the Attorney General¹⁰.

1 *Moggridge v Thackwell* (1803) 7 Ves 36 at 83 per Lord Eldon LC; *Cary v Abbot* (1802) 7 Ves 490; *Morice v Bishop of Durham* (1805) 10 Ves 522 at 541 per Lord Eldon LC; *Paice v Archbishop of Canterbury* (1807) 14 Ves 364; *Ommanney v Butcher* (1823) Turn & R 260 at 271 per Plumer MR; *Re Davis, Hannen v Hillyer* [1902] 1 Ch 876 at 888 per Buckley J; *Re Pyne, Lilley v A-G* [1903] 1 Ch 83; *Re Bennett, Sucker v A-G* [1960] Ch 18, [1959] 3 All ER 295. Formerly (ie before the series of relieving Acts: see PARA 63), the Crown was also called upon to exercise its prerogative in the case of gifts to superstitious uses which were also charitable: see Boyle on Charities (1837) pp 242-280; *A-G v Bowyer* (1798) 3 Ves 714 at 729 per Lord Thurlow LC.

2 *Clifford v Francis* (1679) Freem Ch 330; *A-G v Syderfen* (1683) 1 Vern 224; *Jones' Case* (1690) cited in [1893] 2 Ch 49n, HL; *A-G v Herrick* (1772) Amb 712; *A-G v Bowyer* (1798) 3 Ves 714 at 729 per Lord Thurlow LC; *Legge v Asgill* (1818) Turn & R 265n; *Kane v Cosgrave* (1873) IR 10 Eq 211.

3 *A-G v Peacock* (1676) Cas temp Finch 245; *Ware v A-G* (1824) 3 Hare 194n.

4 *A-G v Syderfen* (1683) 1 Vern 224; *Moggridge v Thackwell* (1803) 7 Ves 36 at 75 per Lord Eldon LC. Cf the cases relating to the jurisdiction of the court: PARAS 529-530.

5 *Newland v A-G* (1809) 3 Mer 684.

6 *Re Smith, Public Trustee v Smith* [1932] 1 Ch 153, CA.

7 *Re Slevin, Slevin v Hepburn* [1891] 2 Ch 236, CA.

8 *Re Bennett, Sucker v A-G* [1960] Ch 18, [1959] 3 All ER 295.

9 *A-G v Peacock* (1676) Cas temp Finch 245; *Moggridge v Thackwell* (1803) 7 Ves 36 at 87 per Lord Eldon LC; Boyle on Charities (1837) pp 239-240.

10 *Report of the Charity Commissioners for England and Wales for 1989* (HC Paper (1989-90) no 343) para 38. See also *De Costa v De Paz* (1754) 2 Swan 487n; *A-G v Herrick* (1772) Amb 712; *Kane v Cosgrave* (1873) IR 10 Eq 211; and see PARA 602. As to the royal sign manual see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 908, 912.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(i) Nature of Visitatorial Power/510. Settlement of disputes and correction of abuses.

(2) THE VISITOR

(i) Nature of Visitatorial Power

510. Settlement of disputes and correction of abuses.

A visitatorial power attaches as a necessary incident to all eleemosynary corporations¹, and may be exercisable in respect of all corporations². It enables the person exercising it, who is called the visitor, to settle disputes between the members of the corporation, to inspect and regulate their actions and behaviour, and generally to correct all abuses and irregularities in the administration of the charity³.

The tribunal of the visitor is forum domesticum, in other words, the court of the founder⁴, its jurisdiction being derived from the founder's right to determine concerning his own creation⁵.

A visitor's decision on matters within his jurisdiction is exclusive⁶ and final, and not subject to review by the High Court⁷. Even the visitor himself cannot relieve against his own sentence⁸; but an action for damages will lie against him for exceeding his jurisdiction⁹.

The extent of the power varies according to the terms of the foundation. If the power given to the visitor is unlimited and universal he has, in respect of the foundation and property moving from the founder, no rule but his sound discretion. If there are particular statutes they are the rule by which he is bound, and if he acts contrary to or exceeds them, he acts without jurisdiction, and consequently his act is a nullity¹⁰.

1 *Appleford's Case* (1672) 1 Mod Rep 82 at 85 per Hale CJ; *Philips v Bury* (1694) Skin 447 at 483-484, HL. As to the meaning of 'eleemosynary corporation' see PARA 224.

2 See Tudor on Charities (7th Edn, 1984) p 312; cf Tudor on Charities (8th Edn, 1995) p 369.

3 1 Bl Com 467; *Philips v Bury* (1694) Skin 447 at 484, HL. As to the visitor's power to settle questions see PARA 520.

4 *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC; *St John's College, Cambridge v Todington* (1757) 1 Burr 158 at 200 per Lord Mansfield; *Spencer v All Souls College* (1762) Wilm 163; *Philips v Bury* (1694) Skin 447, HL.

5 *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC; *R v Lord President of the Privy Council* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL. Cf the maxim *cuius est dare, eius est disponere*: he who gives something may also direct how it is to be used.

6 *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL; *Philips v Bury* (1694) Skin 447, HL; *A-G v Talbot* (1748) 3 Atk 662; *St John's College, Cambridge v Todington* (1757) 1 Burr 158; *R v Dean and Chapter of Chester* (1850) 15 QB 513; *R v Hertford College* (1878) 3 QBD 693, CA; *Thomson v University of London* (1864) 10 Jur NS 669; *Patel v University of Bradford Senate* [1978] 3 All ER 841, [1978] 1 WLR 1488 (affd [1979] 2 All ER 582, [1979] 1 WLR 1006, CA); *Re Wislang's Application* [1984] NI 63; *Hines v Birkbeck College* [1986] Ch 524, [1985] 3 All ER 156 (appeal dismissed [1987] Ch 457n, [1987] 3 All ER 1040n, CA). See also *Herring v Templeman* [1973] 2 All ER 581; affd on grounds not material to the present point [1973] 3 All ER 569, CA. As to the limits on jurisdiction see PARA 518.

7 See PARAS 524-525.

8 *Philips v Bury* (1694) as reported in Show Parl Cas 35 at 52.

9 *Green v Rutherford* (1750) 1 Ves Sen 462 at 470 per Lord Hardwicke LC.

10 Shelford's Law of Mortmain 360; *Philips v Bury* (1694) as reported in 1 Ld Raym 5, HL. As to the extensive and arbitrary nature of the visitatorial power see also *A-G v Archbishop of York* (1831) 2 Russ & M 461 at 468 per Lord Brougham. As to the court's control over the visitor see PARAS 524-528.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(i) Nature of Visitation Power/511. Visitors to the Inns of Court.

511. Visitors to the Inns of Court.

In general visitatorial powers only exist in relation to corporations. An Inn of Court is not a corporation: it does not have statutes, nor does it have a founder who nominated a visitor to hear and determine internal disputes. The Inns of Court are not eleemosynary corporations¹: they are voluntary societies, some of whose activities, such as education, are charitable, but some of which are not, including call to the Bar and disciplining of barristers². Nevertheless it is well established that there is an appeal from decisions of the benchers of the Inns of Court and the disciplinary tribunals of the Inns of Court to the judges as visitors, exercising a normal visitatorial jurisdiction³. Thus they may hear appeals against decisions on property matters such as the letting of chambers within the Inn and dues payable to the Inn by members; they may also hear appeals against disciplinary decisions, such as disbarment for professional misconduct⁴. The limited judicial review jurisdiction available in respect of visitors generally⁵ is equally applicable to visitors to the Inns of Court⁶.

1 As to eleemosynary corporations see PARA 224.

2 See **LEGAL PROFESSIONS** vol 66 (2009) PARA 1050 et seq.

3 *R v Visitors to the Inns of Court, ex p Calder, ex p Persaud* [1994] QB 1, [1993] 2 All ER 876, CA; *R v Gray's Inn* (1780) 1 Doug KB 353; *Manisty v Kenealy* (1876) 24 WR 918; *Lincoln v Daniels* [1962] 1 QB 237, [1961] 3 All ER 740, CA; *Re S (A Barrister)* [1981] QB 683, [1981] 2 All ER 952. See generally **LEGAL PROFESSIONS**.

4 *R v Visitors to the Inns of Court, ex p Calder, ex p Persaud* [1994] QB 1, [1993] 2 All ER 876, CA.

5 See PARA 524 et seq.

6 *R v Visitors to the Inns of Court, ex p Calder, ex p Persaud* [1994] QB 1, [1993] 2 All ER 876, CA. The visitors sit as an appeal tribunal. In *R v Visitors to the Inns of Court, ex p Calder, ex p Persaud* the visitors apparently thought that they were sitting as a reviewing tribunal; this was a serious misapprehension of their function. On judicial review the Court of Appeal allowed the appeal on this ground and quashed the decision of the visitors.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(i) Nature of Visitation Power/512. Quasi-visitatorial powers.

512. Quasi-visitatorial powers.

The Charity Commission¹ may reserve to itself a quasi-visitatorial power to determine disputes in schemes settled by it under the Charities Act 1993². However, true visitatorial powers can only exist in relation to corporations³.

1 As to the Charity Commission see PARAS 538-572.

2 See *Re Hodgson's School* (1878) 3 App Cas 857, PC; *R v Wilson* [1888] WN 12. It is not, apparently, the modern practice to seek to oust the court's jurisdiction completely in this way. As to schemes under the Charities Act 1993 see PARA 187 et seq.

3 Formerly there was a statutory exception to this principle under the Grammar Schools Act 1840 s 15, but this was repealed by the Charities Act 1960 (itself now repealed).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(ii) Constitution of Visitor/513. The visitor.

(ii) Constitution of Visitor

513. The visitor.

Where no visitor has been appointed by the founder, the rule is that the Monarch and her successors are visitors of all lay charitable corporations founded by the Crown alone¹, or by the Crown jointly with a private person, and of all royal foundations endowed by a private person². Where a university is incorporated by royal charter which provides for the appointment of a visitor by the Crown, but no such appointment has been made, the Crown is the visitor³.

Where a private person alone was founder, the law before 1926 was that he and his heirs were visitors⁴, unless the heirs' jurisdiction was expressly excluded⁵. If the heirs of the founder failed⁶, were not discoverable⁷, or were lunatic⁸, and there was no appointment by the founder, the visitatorial power devolved upon the Crown. Descent to the heir has been abolished, but the effect of this upon visitatorial rights does not appear clear.

The visitor of an ecclesiastical charitable corporation is the Ordinary⁹.

1 *A-G v Dedham School* (1857) 23 Beav 350 at 356 per Romilly MR; *Eden v Foster* (1726) 2 P Wms 325; and see *Re Christ Church* (1866) 1 Ch App 526. See also PARA 523.

2 Shelford's Law of Mortmain (1836) 332, 339-340.

3 *Patel v University of Bradford Senate* [1978] 3 All ER 841, [1978] 1 WLR 1488 (affd [1979] 2 All ER 582, [1979] 1 WLR 1066, CA); *Thomas v University of Bradford* [1987] AC 795 at 811, [1987] 1 All ER 834 at 839, HL, per Lord Griffiths. It is thought to have been wrongly conceded in *R v Aston University Senate, ex p Roffey* [1969] 2 QB 538, sub nom *R v Senate of University of Aston, ex p Roffey* [1969] 2 All ER 964, DC, that the university had no visitor. It should be noted that those new universities which have acquired that title under the Further and Higher Education Act 1992 s 77 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 649) were not created by Royal Charter and there is no provision for them to have a visitor.

4 *Eden v Foster* (1726) 2 P Wms 325; *Philips v Bury* (1694) Skin 447 at 483, HL.

5 *St John's College, Cambridge v Todington* (1757) 1 Burr 158 at 200 per Lord Mansfield.

6 *Anon* (1698) 12 Mod Rep 232; *R v Master and Fellows of St Catherine's Hall* (1791) 4 Term Rep 233; *Ex p Wrangham* (1795) 2 Ves 609; *A-G v Earl of Clarendon* (1810) 17 Ves 491 at 498 per Grant MR; *A-G v Ewelme Hospital* (1853) 17 Beav 366 at 381 per Romilly MR.

7 *A-G v Black* (1805) 11 Ves 191.

8 *A-G v Dixie, ex p Bosworth School* (1805) 13 Ves 519 at 533 per Lord Eldon LC.

9 *Philips v Bury* (1694) Skin 447, HL; *A-G v Archbishop of York* (1831) 2 Russ & M 461 at 466 per Lord Brougham LC. See also the Cathedrals Measure 1963 s 6 (repealed, with savings in relation to cathedrals existing on 30 June 1999); and **ECCLESIASTICAL LAW** vol 14 PARA 617. As to the Ordinary see **ECCLESIASTICAL LAW** vol 14 PARA 458. Some of the colleges of Oxford are visitable by the Bishop of Lincoln, in whose diocese Oxford originally was included; the colleges were formerly deemed ecclesiastical foundations, hence the bishop's jurisdiction: see 1 Bl Com 470.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(ii) Constitution of Visitor/514. Appointment of general and special visitors by founder.

514. Appointment of general and special visitors by founder.

The founder may delegate the visitatorial power wholly or partially to any other person and his heirs¹, thereby appointing them general or special visitors.

A person appointed in general terms is a general visitor, having the same jurisdiction as the founder² unless his powers are expressly restricted³. Special visitors are those who are appointed for particular purposes, and their jurisdiction is limited accordingly⁴. A general visitor may also have jurisdiction as a special visitor and may proceed in either character in appropriate circumstances⁵. In addition to a general visitor there may also be a special visitor for a particular purpose, in which case that purpose will be excluded from the powers of the general visitor⁶. The visitatorial power may be divided among a number of special visitors, each appointed for special purposes⁷. In the absence of clear words to the contrary which remove his jurisdiction, it is normally inherent in the visitor that he has all the general powers of visitation and determination of disputes arising under the foundation's statutes. The mere fact that, in certain respects, his powers may be limited in the manner in which they can be exercised does not cut down his status from that of a general visitor to that of a special visitor⁸.

1 *Eden v Foster* (1726) 2 P Wms 325; *A-G v Lock* (1744) 3 Atk 164; *A-G v Talbot* (1748) 1 Ves Sen 78; *St John's College, Cambridge v Todington* (1757) 1 Burr 158. Before the abolition of descent to the heir, the power of appointing and removing visitors might be vested in the heirs of a named person: *A-G v Middleton* (1751) 2 Ves Sen 327. See also *A-G v Talbot*; *St John's College, Cambridge v Todington*.

2 *A-G v Talbot* (1748) 1 Ves Sen 78; *St John's College, Cambridge v Todington* (1757) 1 Burr 158.

3 *R v Bishop of Worcester* (1815) 4 M & S 415 at 420 per Lord Ellenborough CJ.

4 *St John's College, Cambridge v Todington* (1757) 1 Burr 158 at 200 per Lord Mansfield. See also Shelford's Law of Mortmain (1836) 343 et seq; *Bishop of Ely v Bentley* (1732) 2 Bro Parl Cas 220, HL; *R v Bishop of Ely* (1788) 2 Term Rep 290 at 336 per Ashurst J; *R v Bishop of Worcester* (1815) 4 M & S 415 at 420 per Lord Ellenborough CJ.

5 *Bishop of Ely v Bentley* (1732) 2 Bro Parl Cas 220, HL.

6 *St John's College, Cambridge v Todington* (1757) 1 Burr 158.

7 *A-G v Middleton* (1751) 2 Ves Sen 327 at 329 per Lord Hardwicke LC.

8 *Oakes v Sidney Sussex College, Cambridge* [1988] 1 All ER 1004, [1988] 1 WLR 431.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(ii) Constitution of Visitor/515. Appointment of visitor expressly and by implication.

515. Appointment of visitor expressly and by implication.

No technical words are necessary for the appointment of a visitor; it is sufficient if the intention to appoint is manifested¹. The question is invariably one of construction².

Moreover, a visitor may be appointed by implication³, but the fact that the person has the power of construing statutes does not of itself constitute him a visitor if other visitatorial functions are exercisable by other persons⁴. The express exclusion of the jurisdiction of the founder's heirs implies an intention to appoint another as visitor⁵.

By being appointed governors persons do not ipso facto become visitors⁶, unless an appointment as visitors is implied or expressed⁷; but the appointment as governors may

constitute them visitors as well, if they are not concerned in the management of the charity property, and if there is a manifested intention that they should visit⁸. However, the receipt and application of the charity revenues excludes governors from exercising visitatorial jurisdiction⁹, although the bare possession of the legal estate does not do so¹⁰.

If the charity property is not vested in the persons who are to partake, but in trustees for their benefit, there can be no visitor by implication, but the trustees have the powers of a visitor¹¹.

A beneficial interest in a charity prevents a person from becoming visitor of that charity¹².

1 *A-G v Talbot* (1748) 1 Ves Sen 78; *A-G v Middleton* (1751) 2 Ves Sen 327; *St John's College, Cambridge v Todington* (1757) 1 Burr 158.

2 *St John's College, Cambridge v Todington* (1757) 1 Burr 158; *Bishop of Ely v Bentley* (1732) 2 Bro Parl Cas 220 at 232, HL (where the words 'visitor Episcopus Eliensis sit', no Christian name being mentioned, were held to confer the visitatorial power on the Bishop of Ely and his successors); and see *Ex p Kirkby Ravensworth Hospital* (1808) 15 Ves 305 at 315 per Lord Eldon LC.

3 Eg by conferring powers of correction, removal or of construing statutes upon a person: *A-G v Lock* (1744) 3 Atk 164; *A-G v Talbot* (1748) 1 Ves Sen 78; *St John's College, Cambridge v Todington* (1757) 1 Burr 158.

4 *Ex p Kirkby Ravensworth Hospital* (1808) 15 Ves 305.

5 *St John's College, Cambridge v Todington* (1757) 1 Burr 158. See also PARAS 513-514.

6 *Eden v Foster* (1726) 2 P Wms 325; *A-G v Governors of Harrow School* (1754) 2 Ves Sen 551.

7 *Sutton's Hospital Case* (1612) 10 Co Rep 1a at 23a, 31a, Ex Ch; *A-G v Lock* (1744) 3 Atk 164.

8 *Eden v Foster* (1726) 2 P Wms 325.

9 *Eden v Foster* (1726) 2 P Wms 325. In these circumstances they are simply trustees: *A-G v Lubbock* (1837) Coop Pr Cas 15.

10 *A-G v Middleton* (1751) 2 Ves Sen 327 at 329 per Lord Hardwicke LC.

11 *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC.

12 *R v Bishop of Chester* (1728) 2 Stra 797; *R v Dean and Chapter of Rochester* (1851) 17 QB 1. This is on the principle that a man cannot visit himself.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(ii) Constitution of Visitor/516. Suspension of visitatorial powers.

516. Suspension of visitatorial powers.

If the visitatorial power is at any time suspended, the jurisdiction vests in the court¹. Such powers may cease and revive in appropriate circumstances².

1 *R v Bishop of Chester* (1728) 2 Stra 797 (where the visitor was appointed warden of the college and therefore could not visit himself); and see *R v Bishop of Ely* (1788) 2 Term Rep 290; *Green v Rutherford* (1750) 1 Ves Sen 462 at 471 per Lord Hardwicke LC.

2 *R v Bishop of Chester* (1728) 2 Stra 797; Shelford's Law of Mortmain (1836) 368.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(ii) Constitution of Visitor/517. Substitution of bishops by Charity Commission.

517. Substitution of bishops by Charity Commission.

The Charity Commission's powers¹ to substitute the bishop of one diocese for the bishop of another as trustee of charitable trusts² do not extend to or affect trusts of a visitatorial nature exercised in or over the colleges, halls or schools of the universities of Oxford or Cambridge, or the schools of Eton, Winchester or Westminster³.

- 1 As to the Charity Commission see PARAS 538-572.
- 2 I.e. under the Bishops Trust Substitution Act 1858: see PARA 267.
- 3 See the Bishops Trust Substitution Act 1858 s 4.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(iii) Visitor's Powers and Duties/518. Limits of jurisdiction.

(iii) Visitor's Powers and Duties

518. Limits of jurisdiction.

The general jurisdiction¹ of a visitor is limited by the statutes regulating the charity², although under express powers he may be authorised to dispense with or alter those statutes³. The powers of a special visitor are confined within the limits imposed by the founder⁴.

Where a dispute between a university and a member of its academic staff over his contract of employment concerns questions of the domestic laws of the university, the visitor has exclusive jurisdiction⁵. However, the exclusivity of the jurisdiction of the visitor may be modified by statute⁶. In particular, the jurisdiction of the visitor in relation to universities has been considerably eroded by the Education Reform Act 1988 and the Higher Education Act 2004.

The Education Reform Act 1988 provides that the University Commissioners⁷ are to exercise their powers⁸ with a view to securing that the statutes⁹ of each qualifying institution¹⁰ include provisions enabling members of the academic staff¹¹ to be dismissed¹² by an appropriate¹³ body, or any delegate of such body, by reason of redundancy¹⁴, or by an appropriate officer, or any delegate of such an officer, for good cause¹⁵, establishing disciplinary procedures for dealing with complaints made against any members of the academic staff relating to his appointment or employment¹⁶, establishing procedures for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal or who are otherwise disciplined¹⁷, and establishing procedures for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment¹⁸.

The Higher Education Act 2004 provides that the visitor of a qualifying institution¹⁹ has no jurisdiction in respect of: (1) any dispute relating to a member of the academic staff which concerns his appointment or employment or the termination of his appointment or employment²⁰; (2) any other dispute between a member of staff and the qualifying institution in respect of which proceedings could be brought before any court or tribunal²¹; (3) any dispute as to the application of the statutes or other internal laws of the institution in relation to a matter falling within heads (1) or (2)²²; (4) any complaint made in respect of an application for

admission to the qualifying institution as a student²³; or (5) any complaint made by a person as a student or former student either at the qualifying institution or at another institution²⁴ leading to the grant of one of the qualifying institution's awards²⁵.

1 See PARA 510. As to the procedure of visitors see PARA 523.

2 *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC; *Philips v Bury* (1694) Skin 447 at 490, HL.

3 *St John's College, Cambridge v Todington* (1757) 1 Burr 158 at 201 per Lord Mansfield ('It must be collected from the whole purview of the statutes considered together what power the founder meant to give the visitor').

4 *Philips v Bury* (1694) Skin 447 at 478, HL.

5 See *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL; *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; and the cases cited in PARA 510 note 6.

6 See *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL, where Lord Griffiths said at 824, 849, that, if in proceedings under the Employment Protection (Consolidation) Act 1978 (now repealed) a question arises concerning the interpretation or application of the internal laws of a university, the proceedings will not be adjourned and the question will have to be resolved for the purpose of the case by the tribunal hearing the application.

7 As to the University Commissioners see the Education Reform Act 1988 s 202, Sch 11; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

8 le conferred by the Education Reform Act 1988 s 204: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

9 As to the meaning of 'statutes' for these purposes, see the Education Reform Act 1988 s 203(8); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

10 le (1) any university or other institution to which, during the period of three years beginning 1 August 1987, grants in aid are or have been made by the Universities Funding Council, or by the Secretary of State acting on the advice of the University Grants Committee; (2) any constituent college, school or hall or other institution of a university falling within head (1); and (3) any institution not falling within head (1) which is authorised by charter to grant degrees and to which, during the period of three years beginning 1 August 1987, grants are or have been made by the Secretary of State: Education Reform Act 1988 s 202(3); and see **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

11 Reference to academic staff includes a reference to persons whose terms of appointment or contracts of employment are, in the opinion of the University Commissioners, so similar to those of academic staff as to justify their being treated as academic staff for the purposes of this section: Education Reform Act 1988 s 203(4).

12 This includes removal from office, and, in relation to employment under a contract, is to be construed in accordance with the Employment Rights Act 1996 Pt X (ss 94-134A): see the Education Reform Act 1988 s 203(7); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

13 'Appropriate', in relation to a body or officer of a qualifying institution, means appearing to the University Commissioners to be appropriate having regard to the nature and circumstances of the institution: Education Reform Act 1988 s 203(7).

14 See the Education Reform Act 1988 s 203(1)(a); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658. For these purposes, the dismissal of a member of staff is taken to be a dismissal by reason of redundancy if it is attributable wholly or mainly to: (1) the fact that the institution has ceased, or intends to cease, to carry on the activity for the purposes of which he was appointed or employed by the institution, or has ceased, or intends to cease, to carry on that activity in the place in which he carried out his work; or (2) the fact that the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish: s 203(5).

15 See the Education Reform Act 1988 s 203(1)(b); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658. For these purposes, 'good cause', in relation to a member of the academic staff of a qualifying institution, means a reason which is related to his conduct or to his capability or qualifications for performing work of the kind which

he was appointed or employed to do: s 203(6). 'Capability', in relation to such a member, means capability assessed by reference to skill, aptitude, health or any other physical or mental quality: s 203(6)(a). 'Qualifications', in relation to such a member, means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by him: s 203(6)(b).

16 See the Education Reform Act 1988 s 203(1)(c); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

17 See the Education Reform Act 1988 s 203(1)(d); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

18 See the Education Reform Act 1988 s 203(1)(e); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 658.

19 Is any of the following institutions in England or Wales: (1) a university (whether or not receiving financial support under the Further and Higher Education Act 1992 s 65) whose entitlement to grant awards is conferred or confirmed by an Act of Parliament, a Royal Charter, or an order under the Education Reform Act 1988 s 76; (2) a constituent college, school or hall or other institution of a university falling within head (1); (3) an institution conducted by a higher education corporation; (4) a designated institution, as defined by s 72(3): Higher Education Act 2004 ss 11, 46(2).

20 See the Higher Education Act 2004 s 46(1)(a); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 657. This supercedes a similar provision in the Education Reform Act 1988 s 206, which is now repealed: see the Higher Education Act 2004 s 46(4). See also *Hines v Birkbeck College (No 2)* [1992] Ch 33, [1991] 4 All ER 450, CA, where it was held, in relation to the earlier provision, that the reference to the visitor may be made either by the member of the academic staff or by the university.

21 See the Higher Education Act 2004 s 46(1)(b); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 657. In determining whether a dispute falls within s 46(1)(b) it is to be assumed that the visitor does not have jurisdiction to determine the dispute: s 46(3).

22 See the Higher Education Act 2004 s 46(1)(c); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 657.

23 See the Higher Education Act 2004 s 20(1), (2); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1040.

24 Whether or not a qualifying institution.

25 See the Higher Education Act 2004 s 20(1), (3); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1040.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(iii) Visitor's Powers and Duties/519. Time of visitations.

519. Time of visitations.

As a rule the statutes of a charitable corporation provide for general visitations being made at fixed intervals of time, or upon the special request of the corporators. If made otherwise the proceedings are void¹. General visitations have been said to be at least obsolescent². A visitor may at all times hear complaints and appeals of individual members of the corporation and decree an appropriate remedy³ which may be the award of damages⁴.

1 *Philips v Bury* (1694) Skin 447 at 478, HL.

2 *Patel v University of Bradford Senate* [1978] 3 All ER 841 at 846, [1978] 1 WLR 1488 at 1493 per Megarry V-C; affd [1979] 2 All ER 582, [1979] 1 WLR 1066, CA.

3 *Philips v Bury* (1694) Skin 447 at 478, HL; *A-G v Price* (1744) 3 Atk 108.

4 *Thomas v University of Bradford* [1987] AC 795 at 823-824, [1987] 1 All ER 834 at 848-849, HL, per Lord Griffiths, disapproving dictum of Lord Hailsham of St Marylebone LC in *Casson v University of Aston in Birmingham* [1983] 1 All ER 88 at 91, Visitor.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(iii) Visitor's Powers and Duties/520. Power to settle questions.

520. Power to settle questions.

The jurisdiction of the visitor is sometimes referred to as a domestic jurisdiction. It includes not only the interpretation and enforcement of the internal laws of the foundation but also those internal powers and discretions that derive from the internal laws, such as the discretion necessarily bestowed on those in authority in the exercise of their disciplinary functions over members of the foundation¹. It extends beyond members of the foundation to other persons claiming to enforce rights which they enjoy under its internal laws². The visitor's duties include the settling of questions arising as to the interpretation of the statutes relating to the foundation³, and the internal management of a charitable corporation, such as abuses in the internal regulation⁴, the increase of a professor's stipend out of unappropriated revenue⁵, the refusal of the chairman of a university convocation to summon a meeting to consider certain matters⁶, the conduct of examinations by a university⁷, or the election of fellows of a college⁸; the residence of the master of a hospital in the master's house⁹ or the performance of Divine Service by him¹⁰, or his election¹¹; or the election or removal of members of a corporation such as governors¹² or schoolmasters¹³. A visitor has power also to determine whether a person is entitled to become a member of the corporation¹⁴, and whether a person has been properly removed from membership¹⁵.

A member of a corporation refusing to recognise the authority of the visitor may be removed, whether or not the statutes expressly authorise this¹⁶.

1 'A visitor is . . . a Judge, not for the single purpose of interpreting laws, but also for the application of laws, that are perfectly clear: requiring no interpretation; and, farther, for the interpretations of questions of fact, involving no interpretation of laws': *Ex p Kirkby Ravensworth Hospital* (1808) 15 Ves 305 at 311 per Sir Samuel Romilly, cited as authoritative by Lord Griffiths in *Thomas v University of Bradford* [1987] AC 795 at 815, [1987] 1 All ER 834 at 846, HL.

2 *Oakes v Sidney Sussex College, Cambridge* [1988] 1 All ER 1004, [1988] 1 WLR 431.

3 *A-G v Stephens* (1737) 1 Atk 358 at 360 per Lord Hardwicke LC; *Ex p Berkhamstead Free School* (1813) 2 Ves & B 134; *A-G v Smythies* (1836) 2 My & Cr 135 (where the question was whether a fellow of a college might let his rooms).

4 *A-G v Dulwich College* (1841) 4 Beav 255; *A-G v Magdalen College, Oxford* (1847) 10 Beav 402. See *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL (the question whether the university council had correctly followed its disciplinary procedures in dismissing a lecturer was a matter exclusively within the jurisdiction of the visitor), approving *Hines v Birkbeck College* [1986] Ch 524, [1985] 3 All ER 156 (appeal dismissed [1987] Ch 457n [1987] 3 All ER 1040n, CA); *Casson v University of Aston in Birmingham* [1983] 1 All ER 88, Visitor (visitor's jurisdiction to hear petition alleging breach of contract by corporation).

5 *Re Christ Church* (1866) 1 Ch App 526.

6 *R v Dunsheath, ex p Meredith* [1951] 1 KB 127, [1950] 2 All ER 741.

7 *Thomson v London University* (1864) 10 Jur NS 669; *Thorn v University of London* [1966] 2 QB 237, [1966] 2 All ER 338, CA; cf *Herring v Templeman* [1973] 2 All ER 581 (affd on other grounds [1973] 3 All ER 569, CA) (dismissal of student at teacher-training college). See also *R v HM The Queen in Council, ex p Vijayatunga* [1990] 2 QB 444, sub nom *R v University of London Visitor, ex p Vijayatunga* [1989] 2 All ER 843, CA (claim that examiners not qualified to assess thesis: visitor properly refused to intervene).

8 *A-G v Talbot* (1748) 3 Atk 662 at 675 per Lord Hardwicke LC; *Ex p Wrangham* (1795) 2 Ves 609; *Re Catharine Hall, ex p Inge* (1831) 2 Russ & M 590.

9 *Re St Mary Magdalen Hospital, Colchester* (1843) 12 LJCh 375; *Ex p Berkhamstead Free School* (1813) 2 Ves & B 134; *A-G v Smythies* (1836) 2 My & Cr 135 at 142 per Lord Cottenham LC.

- 10 *A-G v Crook* (1836) 1 Keen 121.
- 11 *A-G v Archbishop of York* (1831) 2 Russ & M 461 at 468 per Lord Brougham LC.
- 12 *A-G v Dixie, ex p Bosworth School* (1805) 13 Ves 519; *A-G v Earl of Clarendon* (1810) 17 Ves 491 at 498 per Grant MR.
- 13 *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532.
- 14 Eg in cases of claims of rejected candidates for fellowships and scholarships: *R v Warden of All Souls College, Oxford* (1681) T Jo 174; *St John's College, Cambridge v Todington* (1757) 1 Burr 158; *R v Master and Fellows of St Catharine's Hall* (1791) 4 Term Rep 233; *Ex p Wrangham* (1795) 2 Ves 609; *R v Hertford College* (1878) 3 QBD 693, CA.
- 15 *Re Wislang's Application* [1984] NI 63; *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL. It 'extends to all questions of disputed membership': *Patel v University of Bradford Senate* [1979] 2 All ER 582 at 584, [1979] 1 WLR 1066 at 1069, CA, per Orr LJ.
- 16 *Philips v Bury* (1694) Skin 447 at 477-478, HL.

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521. Restrictions on visitor's power.

A visitor is not entitled to interfere with the proceedings of corporators in matters over which they have discretion¹, unless their discretion has been exercised improperly²; nor may he insist upon a corporation performing some act which according to the statutes regulating the corporation may be performed by another if the corporation fails to do it³, or interfere with the internal management of the charitable corporation unless the trusts of the foundation are disregarded⁴, or appoint a master of a free school on the ground that the appointments previously made by the proper electors were invalid⁵.

As the visitor's jurisdiction extends only over the members of the corporation⁶, he has no power to compel specific performance of an agreement between the corporators and other parties⁷, or to reverse a decision of a corporation concerning strangers to the foundation⁸.

Except under an express power, a visitor cannot be judge in his own cause⁹, nor can he alter the general constitution of the trust¹⁰.

- 1 *Ex p Wrangham* (1795) 2 Ves 609 at 625 per Lord Thurlow LC (election of fellows).
- 2 *Re Catharine Hall, ex p Inge* (1831) 2 Russ & M 590 at 601 per Lord Brougham LC; *R v Hertford College* (1878) 3 QBD 693 at 701, CA, per Lord Coleridge CJ.
- 3 *Ex p Wrangham* (1795) 2 Ves 609 at 621 per Lord Thurlow LC, where the statutes provided that if a college failed to elect fellows, the right should be exercised by the master.
- 4 *A-G v Earl of Clarendon* (1810) 17 Ves 491 at 507 per Grant MR.
- 5 *A-G v Black* (1805) 11 Ves 191.
- 6 See *Herring v Templeman* [1973] 3 All ER 569, CA, in relation to a student at a teacher-training college. See also *Casson v University of Aston in Birmingham* [1983] 1 All ER 88, Visitor (no jurisdiction to hear petition alleging breach of pre-admission contract by corporation); *Oakes v Sidney Sussex College, Cambridge* [1988] 1 All ER 1004, [1988] 1 WLR 431 (visitor's jurisdiction dependent on whether claim arose under domestic law of college, not on nature of claimant's college membership).
- 7 *R v Windham* (1776) 1 Cowp 377.

8 *Ex p Davison* (1772) cited in 1 Cowp 319 (expulsion of commoners by a college). See also *R v Grundon* (1775) 1 Cowp 315.

9 This is upon the principle that the same person cannot be visitor and visited: *R v Bishop of Ely* (1788) 2 Term Rep 290; *A-G v Middleton* (1751) 2 Ves Sen 327 at 329 per Lord Hardwicke LC; and see *R v Hertford College* (1878) 3 QBD 693 at 703, CA, per Lord Coleridge CJ. See also *In re P (A Barrister)* [2005] 1 WLR 3019, visitor.

10 *Ex p Bolton School* (1789) 2 Bro CC 662.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(iii) Visitor's Powers and Duties/522. Accession to the foundation.

522. Accession to the foundation.

In the case of an accession of a new to an old foundation the visitor of the old foundation has no jurisdiction over the new foundation unless the visitatorial power is especially given to him by the subsequent founder, or his appointment as visitor is to be implied¹.

Where new property is annexed to an old foundation without a special trust being declared or a new visitor being appointed, the necessary implication is that the new property is intended to be subject to the existing visitatorial jurisdiction². However, the visitor of the old foundation has no jurisdiction over an annexed estate concerning which a special trust has been declared³. If the Queen is visitor of an old foundation, which accepts an accession, it seems that she becomes visitor of the new foundation, even if the founder declares there shall be no visitor⁴.

A lay corporation composed of an indefinite number of members may incorporate additional members, who will thereupon become subject to the jurisdiction of the visitor⁵.

1 *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC.

2 *Green v Rutherford* (1750) 1 Ves Sen 462 at 473 per Lord Hardwicke LC; *A-G v Talbot* (1748) 3 Atk 662 (accession of fellowship to college foundation); *A-G v Flood* (1816) Hayes & Jo App xxi at p xxv. See also *Re Catharine Hall, ex p Inge* (1831) 2 Russ & M 590 at 596 per Lord Brougham LC.

3 *Green v Rutherford* (1750) 1 Ves Sen 462 at 468-469, 473 per Lord Hardwicke LC.

4 *A-G v Catherine Hall, Cambridge* (1820) Jac 381 at 400 per Lord Eldon LC. It was doubted whether a college of which the King was visitor could accept an accession without his consent.

5 *A-G v Talbot* (1748) 3 Atk 662 at 675 per Lord Hardwicke LC.

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523. Procedure and duties of visitor.

Whether a visitor is exercising his jurisdiction upon a general visitation or upon a special appeal¹, he need not proceed according to the rules of common law² so long as he pays regard to the positive forms prescribed by the statutes regulating the foundation³, and subject to this

condition, and provided he acts judicially, the actual manner of hearing is within his discretion⁴. He must hear all appeals not of a frivolous nature⁵.

A visitor should cite the interested parties to appear before him⁶, and no proceedings ought to be taken against an absent party until he has been cited⁷. The visitor may decide questions upon written or oral evidence⁸, on oath or otherwise⁹; but he cannot give his decision without hearing the parties concerned or, at least, affording them an opportunity of being heard¹⁰.

The visitor must make the relevant decision, but there is nothing to prevent him appointing a competent person to advise him, and that person may conduct any hearing and obtain all necessary information¹¹. Provided that he acts fairly, and the visitor makes the final decision, there is no delegation which could be regarded as unlawful¹². The 'competent person' should normally be a lawyer of standing and most of the more modern cases show that a judge or a Queen's Counsel has been appointed¹³.

The visitatorial jurisdiction of the Crown is exercised upon application by petition¹⁴. Like a private visitor, the Crown is not bound by any particular forms of procedure¹⁵. Unless the petitioner can prove that the Crown is in fact visitor, the Crown has no authority to hear the petition¹⁶. Previously the jurisdiction was exercised by the Lord Chancellor¹⁷, or such other person as he may advise Her Majesty to nominate, on behalf of the Crown¹⁸. However, since the abolition of the Lord Chancellor's judicial functions by the Constitutional Reform Act 2005¹⁹, a representative will be appointed on a case-by-case basis on the advice of the Secretary of State for Justice²⁰. Where the Lord Chancellor previously acted as visitor in his own right, this function is now vested in the Crown or other another suitable office²¹.

1 As to the jurisdiction of general or special visitors see PARA 514.

2 *R v Bishop of Ely* (1788) 2 Term Rep 290 at 338 per Buller J. See, however, the text and note 10.

3 Com Dig Visitor, C.

4 *A-G v Governors of Atherstone Free School* (1834) 3 My & K 544 at 550 per Lord Brougham LC; *R v HM The Queen in Council, ex p Vijayatunga* [1990] 2 QB 444, sub nom *R v University of London Visitor, ex p Vijayatunga* [1989] 2 All ER 843, CA (in some cases he should exercise a merely supervisory jurisdiction, and in others an appellate jurisdiction). In *Thomas v University of Bradford (No 2)* [1992] 1 All ER 964, the jurisdiction was said to be similar to that which the High Court exercises by way of judicial review. See also *Re Dean of York* (1841) 2 QB 1.

5 Shelford's Law of Mortmain (1836) 379.

6 *R v Cambridge University* (1723) 8 Mod Rep 148 at 163 per Pratt CJ. See also *Watson and Freemantle v Warden etc of All Souls College, Oxford* (1864) 11 LT 166.

7 Com Dig Visitor, C.

8 *R v Bishop of Ely* (1794) 5 Term Rep 475.

9 Shelford's Law of Mortmain (1836) 379. However, see *Green v Rutherford* (1750) 1 Ves Sen 462 at 473 per Lord Hardwicke LC.

10 *R v Bishop of Ely* (1788) 2 Term Rep 290 at 336 per Ashurst J; *R v Cambridge University* (1723) 8 Mod Rep 148; see also *R v Gaskin* (1799) 8 Term Rep 209; *Doe d Earl of Thanet v Gartham* (1823) 8 Moore CP 368 at 371 per Park J.

11 *R (on the application of Varma) v HRH The Duke of Kent* [2004] EWHC 1705 (Admin) at [16], [2004] ELR 616 at [16] per Collins J.

12 *R (on the application of Varma) v HRH The Duke of Kent* [2004] EWHC 1705 (Admin) at [16], [2004] ELR 616 at [16] per Collins J.

13 *R (on the application of Varma) v HRH The Duke of Kent* [2004] EWHC 1705 (Admin) at [16], [2004] ELR 616 at [16] per Collins J.

14 *Ex p Wrangham* (1795) 2 Ves 609; *A-G v Black* (1805) 11 Ves 191; *Re Catharine Hall, ex p Inge* (1831) 2 Russ & M 590; *Re Queen's College, Cambridge* (1828) 5 Russ 64; *Re University College, Oxford* (1848) 2 Ph 521; *Re Christ Church* (1866) 1 Ch App 526.

15 *Queen's College, Cambridge, Case* (1821) Jac 1 at 19 per Lord Eldon LC.

16 *Re Garstang Church Town School, ex p Pedder* (1829) 7 LJOS Ch 169 at 172 per Lord Lyndhurst LC. As to the costs of petitions to the Lord Chancellor see *Ex p Dann* (1804) 9 Ves 547; *Re Masters, Governors and Trustees of Bedford Charity* (1819) 2 Swan 470 at 532 per Lord Eldon LC.

17 Co Litt 96a; Shelford's Law of Mortmain (1836) 333; *R v Master and Fellows of St Catherine's Hall* (1791) 4 Term Rep 233 at 244 per Lord Kenyon CJ; *A-G v Dixie, ex p Bosworth School* (1805) 13 Ves 519; *A-G v Earl of Clarendon* (1810) 17 Ves 491 at 498 per Grant MR; *Re Christ Church* (1866) 1 Ch App 526. See PARAS 510, 513. As to costs in hearings before the Lord Chancellor as visitor see *Queen's College, Cambridge, Case* (1821) Jac 1 at 47 per Lord Eldon LC; *A-G v Master and Fellows of Catherine Hall, Cambridge* (1820) Jac 381 at 401-402 per Lord Eldon LC.

18 *Thomas v University of Bradford* [1987] AC 795 at 811, [1987] 1 All ER 834 at 839, HL, per Lord Griffiths. In *R v HM The Queen in Council, ex p Vijayatunga* [1990] 2 QB 444, sub nom *R v University of London Visitor, ex p Vijayatunga* [1989] 2 All ER 843, CA, the Crown nominated a committee of the Judicial Committee of the Privy Council, in *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL, the Lord President of the Privy Council, and in *Thomas v University of Bradford (No 2)* [1992] 1 All ER 964, Lord Browne-Wilkinson, a Lord of Appeal in Ordinary. As to the Judicial Committee of the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 311; **COURTS**. As to Lords of Appeal in Ordinary see **COURTS**.

19 See the Constitutional Reform Act 2005 Pt II (ss 2-22); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

20 See HL Deb 2 March 2004 vol 658 col WS51.

21 See the Lord Chancellor (Transfer of Functions and Supplementary Provisions) Order 2007, SI 2007/661.

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(iv) Court's Control over Visitors

524. Discretionary powers of visitors.

The court's jurisdiction does not extend to matters within the properly exercised discretion of the visitor¹, or the trustee², governors³ or other authority⁴, but the court controls the visitor's discretionary powers if exercised corruptly or dishonestly⁵.

1 *A-G v Harrow School Governors* (1754) 2 Ves Sen 551; *A-G v Dulwich College* (1841) 4 Beav 255; *A-G v Magdalen College, Oxford* (1847) 10 Beav 402; *Thomson v London University* (1864) 33 LJCh 625 at 634; *Thorne v University of London* [1966] 2 QB 237, [1966] 2 All ER 338, CA; *Herring v Templeman* [1973] 2 All ER 581; affd on other grounds [1973] 3 All ER 569, CA. As to what matters are within the visitor's discretion see PARA 510 et seq.

2 *A-G v Harrow School Governors* (1754) 2 Ves Sen 551.

3 *Eden v Foster* (1726) 2 P Wms 325. Cf *R v Governors of Christ's Hospital, ex p Dunn* [1917] 1 KB 19, a case where the matter was not within the governors' discretion.

4 *A-G v Bedford Corp'n* (1754) 2 Ves Sen 505; *Costabadie v Costabadie* (1847) 6 Hare 410; *Hayman v Governors of Rugby School* (1874) LR 18 Eq 28.

5 *Ex p Kirkby Ravensworth Hospital* (1808) 15 Ves 305 at 314 per Lord Eldon LC; and see *A-G v Harrow School Governors* (1754) 2 Ves Sen 551.

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525. Visitors acting in excess of authority.

The court will grant a prohibition¹ if a visitor exceeds the limits of his visitatorial authority², or proceeds contrary to his citation, or inflicts different penalties from those which the statutes prescribe³; or where a person purports to act as visitor when he has no jurisdiction⁴. Mere irregularity in the proceedings or informality in the acts of a visitor will not render him liable to a prohibition⁵. Where he has no jurisdiction, appearance or answer does not give him jurisdiction. If there is a want of jurisdiction it may be called in question at any time, even after sentence⁶. An order may also be granted to quash a decision of the visitor which amounts to an abuse of his powers, or if he has acted in breach of the rules of natural justice⁷. Judicial review does not, however, lie to impeach the decisions of a visitor taken within his jurisdiction (in the narrow sense⁸) on questions of either law or fact⁹. This is because the applicable law is not the common law of England but a peculiar or domestic law of which the visitor is the sole judge¹⁰.

1 A prohibition is now referred to as a prohibition order and must be made by an application for judicial review: see the Supreme Court Act 1981 s 31(1); and **JUDICIAL REVIEW** vol 61 (2010) PARA 691.

2 *Bishop of Chichester v Harvard and Webber* (1787) 1 Term Rep 650.

3 *Bishop of Ely v Bentley* (1732) 2 Bro Parl Cas 220, HL.

4 *R v Bishop of Chester* (1748) 1 Wm Bl 22 at 25; *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532 at 558 per Shadwell V-C.

5 *Bishop of Ely v Bentley* (1732) 2 Bro Parl Cas 220, HL.

6 *Green v Rutherford* (1750) 1 Ves Sen 462 at 471 per Lord Hardwicke LC.

7 *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; *Thomas v University of Bradford* [1987] AC 795 at 825, [1987] 1 All ER 834 at 850, HL, per Lord Griffiths; *R v Committee of the Lords of the Judicial Committee of the Privy Council acting for the Visitor of the University of London, ex p Vijayatunga* [1988] QB 322, sub nom *R v University of London Visitor, ex p Vijayatunga* [1987] 3 All ER 204; affd sub nom *R v HM The Queen in Council, ex p Vijayatunga* [1990] 2 QB 444, sub nom *R v University of London Visitor, ex p Vijayatunga* [1989] 2 All ER 843, CA. As to quashing orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 693 et seq; **CIVIL PROCEDURE**.

8 Ie where he has power under the regulating documents to enter into the adjudication of the dispute.

9 Apart from the anomalous and unique case of the visitor, any error of law made by an administrative tribunal or inferior court may be a ground for quashing the decision on judicial review: *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL; *O'Reilly v Mackman* [1983] 2 AC 237, [1982] 3 All ER 1124, HL; *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL. As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 602 et seq.

10 *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; *Appleford's Case* (1672) 1 Mod Rep 82; *R v Bishop of Chester* (1747) 1 Wm Bl 22; *R v Bishop of Ely* (1794) 5 Term Rep 475; *Ex p Buller* (1855) 1 Jur NS 709. See also *A-G v Lock* (1744) 3 Atk 164 at 165 per Lord Hardwicke LC; *A-G v Talbot* (1748) 3 Atk 662 at 674 per Lord Hardwicke LC; *A-G v Catherine Hall, Cambridge* (1820) Jac 381 at 392 per Lord Eldon LC; *A-G v Dedham School* (1857) 23 Beav 350.

UPDATE

525 Visitors acting in excess of authority

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(iv) Court's Control over Visitors/526. Where Charity Commission is visitor.

526. Where Charity Commission is visitor.

Where visitatorial jurisdiction is reserved by a scheme to the Charity Commission¹, the court will not interfere in matters coming within that jurisdiction which have already been determined conclusively within the meaning of the scheme, before any application is made to the court².

1 See the Charity Commissioners' (now the Charity Commission) powers under the Endowed Schools Act 1869 s 23 (repealed), and the decision thereunder in *Re Hodgson's School* (1878) 3 App Cas 857, PC. As to the Charity Commissioners see PARA 538. As to the Charity Commission see PARAS 538-572.

2 *R v Wilson* [1888] WN 12, DC (where the court refused to consider a question regarding the validity of the election of a governor which had already been determined conclusively by the Commissioners under the scheme). Judicial review proceedings can only be brought against a decision of the Commission where it can be shown that, in making the decision, it had acted outside its jurisdiction; no such proceedings can be brought in the case of an error of law: *R v Charity Comrs for England and Wales, ex p Baldwin* (2000) 33 HLR 538. See also PARA 512.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(iv) Court's Control over Visitors/527. Mandatory order to put visitatorial power in motion.

527. Mandatory order to put visitatorial power in motion.

The object and effect of a mandatory order is no more than to put the visitatorial power in motion, whereupon the visitor is at liberty to pursue his own course without review by the court¹.

The court may make a mandatory order to compel a visitor to exercise his visitatorial power where he has not acted, declines to act, or acts improperly²; or to compel him to receive and hear an appeal, although the court cannot force him to decide on the merits if he considers the appeal is brought too late³; so, too, the court may make a mandatory order against the head of a college and the fellows where the laws of the land have been disobeyed by the fellows, even though there is a visitor⁴.

A mandatory order will lie against the governors of a charity to compel them to appoint a person duly recommended to an office where, by the constitution of the charity, the governors are bound to act on the recommendation⁵.

The court refuses, however, to make such an order where it is doubtful whether the visitatorial power is in the persons required to exercise it⁶, or to compel an inferior officer of a college to execute the visitor's sentence in accordance with the statutes⁷, or to restore a fellow or member of a college⁸, or a chaplain⁹ or a sister of a hospital¹⁰.

1 *A-G v Archbishop of York* (1831) 2 Russ & M 461 at 468 per Lord Brougham LC. A mandatory order was formerly known as an order of mandamus: see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq. An application for

a mandatory order must be made by an application for judicial review: see the Supreme Court Act 1981 s 31(1); and **JUDICIAL REVIEW** vol 61 (2010) PARA 691.

2 *R v Bishop of Ely* (1788) 2 Term Rep 290; *R v Cambridge University* (1723) 8 Mod Rep 148; *R v Bishop of Worcester* (1815) 4 M & S 415; *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532 at 558 per Shadwell V-C. See also *Gunston v Dare* (1738) West temp Hard 573 at 576 per Lord Hardwicke LC.

3 *R v Bishop of Ely* (1794) 5 Term Rep 475. See also *R v Bishop of Lincoln* (1785) 2 Term Rep 338n; *Ferguson v Kinnoul* (1842) 4 State Tr NS 785 at 820, HL, per Lord Brougham.

4 *R v St John's College, Cambridge* (1693) 4 Mod Rep 233; but see *R v Gower* (1694) 3 Salk 230.

5 *R v Governors of Christ's Hospital, ex p Dunn* [1917] 1 KB 19.

6 *R v Bishop of Ely* (1750) 1 Wm Bl 52; *Brideoak's Case* (1714) cited in 1 Wm Bl 58.

7 *A-G v Aspinall* (1837) 2 My & Cr 613 at 627 per Lord Cottenham LC; *Stevens v Chown* [1901] 1 Ch 894 at 905 per Farwell J; *A-G v De Winton* [1906] 2 Ch 106 at 115 per Farwell J.

8 *Dr Widdrington's Case* (1662) 1 Lev 23; *Appleford's Case* (1672) 1 Mod Rep 82; *Parkinson's Case* (1689) 3 Mod Rep 265; *R v Warden of All Souls College, Oxford* (1681) T Jo 174; *A-G v Governors of Atherstone Free School* (1834) 3 My & K 544 at 550 per Lord Brougham LC; *R v Hertford College* (1878) 3 QBD 693, CA.

9 *Prohurst's Case* (1691) Carth 168.

10 *R v Wheeler* (1674) 3 Keb 360.

UPDATE

527 Mandatory order to put visitatorial power in motion

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(2) THE VISITOR/(iv) Court's Control over Visitors/528. Remedies against visitor.

528. Remedies against visitor.

The remedy, if any, of a person deprived or removed by a visitor has been said¹ to lie in an action of ejectment, long since replaced by an action to recover possession of land², or, if the visitor has acted contrary to or exceeded his jurisdiction, in a claim against him on that ground³. The appropriate modern procedure is by way of an application for judicial review⁴.

1 In *R v Bishop of Chester* (1748) 1 Wils 206 at 209 per Lee CJ.

2 See *Gledhill v Hunter* (1880) 14 ChD 492.

3 See *Green v Rutherford* (1750) 1 Ves Sen 462 at 472 per Lord Hardwicke LC.

4 See PARAS 525, 527. As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/529. Jurisdiction to enforce trusts.

(3) THE COURTS

529. Jurisdiction to enforce trusts.

As a general rule the High Court has jurisdiction to enforce the observance or redress breaches of all trusts, charitable as well as private¹. The court cannot exercise its charitable jurisdiction if no trust is ascertained². The jurisdiction in the case of charities is more extensive than in the case of private trusts³; where the trust is charitable, the court has jurisdiction not only to enforce it and to redress all breaches⁴, but also, in certain circumstances, to make schemes for the administration of the charity⁵ and to alter or modify the trust to a greater or less degree by virtue of the cy-près doctrine⁶.

The court equally enforces the execution of trusts where corporations eleemosynary⁷, ecclesiastical⁸, or civil⁹ are trustees for charitable or public purposes.

1 *Dick v Audsley* [1908] AC 347 at 351, HL, per Lord Loreburn LC. This jurisdiction, formerly exercised by the Court of Chancery, is now vested in the High Court of Justice and exercised by the Chancery Division: see Supreme Court Act 1981 ss 5(4), (5), 19, 61(1), 64, 65, Sch 1. The jurisdiction has been exercised by the court from the earliest times: see *Wakeryng v Bayle* (circa 1422-70) 1 Calendar of Proceedings in Chancery lvii; *Lyon v Hewe* (circa 1465-83) 2 Calendar of Proceedings in Chancery xlv; *Payne's Case* (temp Eliz) Duke ed Bridgman, 154. For an account of the early history of charitable trusts and uses, see Gareth Jones *History of the Law of Charity*.

2 *Ommanney v Butcher* (1823) Turn & R 260 at 270 per Plumer MR; *A-G v St John's Hospital, Bedford* (1865) 2 De GJ & Sm 621 at 635 per Turner LJ; but see also *Re Bennett, Sucker v A-G* [1960] Ch 18 at 26, [1959] 3 All ER 295 at 296 per Vaisey J. In this context the word 'trust' may have to be understood in a sense wider than usual, as companies and other corporate bodies are clearly subject to the court's charity jurisdiction where they are established for charitable purposes, although they may not necessarily be trustees of their property in a conventional sense. See also *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA; and PARA 235.

3 *A-G v Governors etc of Sherborne Grammar School* (1854) 18 Beav 256 at 280 per Romilly MR; *Clephane v Edinburgh Corp'n* (1869) LR 1 Sc & Div 417 at 421, HL, per Lord Westbury; *Andrews v M'Guffog* (1886) 11 App Cas 313 at 316, HL, per Lord Watson. The courts are, perhaps, even more reluctant to sanction the remuneration of trustees in the case of a charity than in the case of a private trust: see *Report of the Charity Commissioners for England and Wales for 1990* (HC Paper (1990-91) no 362) App D (c); and **TRUSTS** vol 48 (2007 Reissue) PARA 930 et seq. See also *Report of the Charity Commissioners for England and Wales for 1981* (HC Paper (1981-82) no 363) para 64; and *Report of the Charity Commissioners for England and Wales for 1988* (HC Paper (1988-89) no 319) para 38. As to the Charity Commission's publications see PARA 542.

4 *A-G v Governors etc of Sherborne Grammar School* (1854) 18 Beav 256. See also *Incorporated Society in Dublin v Richards* (1841) 1 Con & Law 58; *A-G v Dublin Corp'n* (1827) 1 Bli NS 312 at 347, HL per Lord Redesdale; *A-G v St John's Hospital, Bedford* (1865) 2 De GJ & Sm 621.

5 See *Re Royal Society's Charitable Trusts* [1956] Ch 87, [1955] 3 All ER 14. As to schemes see PARA 177 et seq.

6 As to the doctrine of cy-près see PARA 208 et seq.

7 As to the court's jurisdiction over corporations see PARA 235; and *A-G v Magdalen College, Oxford* (1847) 10 Beav 402 at 409 per Lord Langdale MR (where a college was trustee of a grammar school); *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532 at 560 per Shadwell V-C (dean and chapter trustees); *Daugars v Rivaz* (1860) 28 Beav 233. The duty of appointing and removing schoolmasters may be (*Willis v Childe* (1851) 13 Beav 117), but is not necessarily, in the nature of a trust (*A-G v Magdalen College, Oxford* at 409 per Lord Langdale MR; *Whiston v Dean and Chapter of Rochester*). If it is a trust, an improper removal is restrained by injunction. If it is not a trust but only a duty imposed on trustees, any breach must be redressed by the visitor and not by the court: *A-G v Magdalen College, Oxford*. As to eleemosynary corporations see PARA 224.

8 *A-G v St John's Hospital, Bedford* (1865) 2 De GJ & Sm 621 at 635 per Turner LJ. See also *A-G v Brereton* (1752) 2 Ves Sen 425.

9 *Coventry Corp'n v A-G* (1720) 7 Bro Parl Cas 235, HL; *A-G v Shrewsbury Town* (1726) Bunb 215; *A-G v Governors of Foundling Hospital* (1793) 2 Ves 42 at 46 per Lord Commissioner Eyre; *Viscount Gort v A-G* (1817)

6 Dow 136, HL; *A-G v Brewers' Co* (1816) 1 Mer 495; *A-G v Stafford Corpn* (1826) 1 Russ 547; *A-G v Exeter Corpn* (1827) 2 Russ 362; *A-G v Dublin Corpn* (1827) 1 Bli NS 312, HL; *A-G v Carlisle Corpn* (1828) 2 Sim 437 at 449 per Shadwell V-C; *A-G v Liverpool Corpn* (1835) 1 My & Cr 171 at 201 per Pepys MR; and see *A-G v Plymouth Corpn* (1845) 9 Beav 67.

UPDATE

529 Jurisdiction to enforce trusts

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/530. Extent of jurisdiction.

530. Extent of jurisdiction.

After some conflict of judicial opinion¹ the rule is now established that, when there is a gift to charity and the donor either created or intended to create a trust, whether the objects are specified or indefinite, the court has jurisdiction to enforce the execution of the trust, and, if necessary, to apply the gift to charitable purposes by means of a scheme².

¹ *A-G v Berryman* (1755) Dick 168; *A-G v Herrick* (1772) Amb 712; *A-G v Marchioness of Londonderry* (1825) 3 Hare 195n; *A-G v Fletcher* (1835) 5 LJCh 75; *Felan v Russell* (1842) 4 I Eq R 701 (in the last-mentioned cases, though a trust was created, the disposition of the property was held to devolve on the Crown and not on the court).

² *Cook v Duckenfield* (1743) 2 Atk 562 at 567, 569 per Lord Hardwicke LC; *Moggridge v Thackwell* (1803) 7 Ves 36 (affd (1807) 13 Ves 416, HL); *Mills v Farmer* (1815) 1 Mer 55; *Paice v Archbishop of Canterbury* (1807) 14 Ves 364; *Ommanney v Butcher* (1823) Turn & R 260 at 271 per Plumer MR; *Hayter v Trego* (1830) 5 Russ 113; *A-G v Ironmongers' Co* (1834) 2 My & K 576; *Reeve v A-G* (1843) 3 Hare 191 at 197 per Wigram V-C; *Re Davis, Hannen v Hillyer* [1902] 1 Ch 876 at 888 per Buckley J; *Re Pyne, Lilley v A-G* [1903] 1 Ch 83; *Re Bennett, Sucker v A-G* [1960] Ch 18, [1959] 3 All ER 295. As to the exercise of the court's jurisdiction to make schemes see PARA 199 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/531. Limits of jurisdiction.

531. Limits of jurisdiction.

It is not within the court's jurisdiction to determine whether ecclesiastical duties enjoined under a charitable foundation are properly performed¹. The court cannot give a charity a larger interest in property than that intended by the testator², and it is extremely reluctant to prevent a gift over of property from one charity to another in circumstances expressly contemplated by the donor³.

¹ *A-G v Smithies* (1836) 1 Keen 289; cf *A-G v Dean and Chapter of Ripon Cathedral* [1945] Ch 239, [1945] 1 All ER 479.

² *Re Randell, Randell v Dixon* (1888) 38 ChD 213 at 216 per North J; *Re Blunt's Trusts, Wigan v Clinch* [1904] 2 Ch 767.

3 In *Re Hanbey's Will Trusts, Cutlers' Co v President and Governors of Christ's Hospital, London* [1956] Ch 264, [1955] 3 All ER 874, Danckwerts J held that there was jurisdiction to make such a scheme, but did not exercise it. See also *Christ's Hospital v Grainger* (1849) 1 Mac & G 460 at 465 per Lord Cottenham LC; *Re Tyler, Tyler v Tyler* [1891] 3 Ch 252, CA. Quaere whether the court has jurisdiction even to defeat a resulting trust in this way: see PARA 181 note 7.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/532. No charitable gift.

532. No charitable gift.

The court cannot exercise its charitable jurisdiction where the gift is not charitable in the legal sense, as in the case of a private charity¹, or where a gift fails entirely owing to the charitable intention not taking effect², or where the gift was never subject to a charitable trust³, as in the case of a gift to charity subject to the fulfilment of a condition which was never satisfied⁴, or in the case of voluntary subscriptions or funds impressed with no charitable trust⁵.

1 *Ommanney v Butcher* (1823) Turn & R 260 at 273 per Plumer MR. As to private charities see PARA 59.

2 *A-G v Boulton* (1794) 2 Ves 380 at 387 per Arden MR (charitable object to build a church in parish of A, which the parish did not permit); *Biscoe v Jackson* (1887) 35 ChD 460 at 463, CA, per Kay J; *Re Wilson, Twentyman v Simpson* [1913] 1 Ch 314.

3 *De Themmines v De Bonneval* (1828) 5 Russ 288.

4 *Chamberlayne v Brockett* (1872) 8 Ch App 206 at 211 per Lord Selborne LC. See also *Re Gyde, Ward v Little* (1898) 79 LT 261, CA; *Re University of London Medical Sciences Institute Fund, Fowler v A-G* [1909] 2 Ch 1, CA.

5 *Anon* (1745) 3 Atk 277; *Leslie v Birnie* (1826) 2 Russ 114 at 119 per Lord Eldon LC.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/533. Charity founded by royal charter.

533. Charity founded by royal charter.

On the principle that the authority of the Crown is higher than that of the court¹, the court has generally no jurisdiction to refund or re-establish charities founded by royal charter², but it does have jurisdiction to regulate or control the charity by way of scheme³, especially on financial grounds and in altered circumstances⁴, and to see that the provisions of the charter are observed⁵ where improper conduct is alleged⁶.

The court has power under the Charities Act 1993 to make schemes in relation to chartered charities, including cy-près schemes⁷, which necessitate altering the charter, but the schemes are not to come into operation until the charter has been amended⁸, which may be done by Order in Council⁹.

1 *A-G v Smart* (1748) 1 Ves Sen 72; *A-G v Middleton* (1751) 2 Ves Sen 327; *A-G v Bedford Corp* (1754) 2 Ves Sen 505; *A-G v Governors of Foundling Hospital* (1793) 2 Ves 42 at 47 per Lord Commissioner Eyre; *A-G v Earl of Clarendon* (1810) 17 Ves 491; *A-G v Dedham School* (1857) 23 Beav 350 at 356 per Romilly MR; *A-G v Governors of Christ's Hospital* [1896] 1 Ch 879 at 888 per Chitty J. See also *Re Chertsey Market, ex p Walthew* (1819) 6 Price 261; *Re Browne's Hospital v Stamford* (1889) 60 LT 288.

2 le except where the charter is subsequent to the original foundation: *A-G v Dedham School* (1857) 23 Beav 350 at 356 per Romilly MR. See also *A-G v St Olave's Grammar School, Southwark* (1837) Coop Pr Cas 267.

3 *Re Whitworth Art Gallery Trusts, Manchester Whitworth Institute v Victoria University of Manchester* [1958] Ch 461, [1958] 1 All ER 176; *A-G v Hicks* (1810) 3 Bro CC 166n; *Re Yarm Free Grammar School* (1853) 10 Hare App I, V; *Re Berkhamsted Grammar School* [1908] 2 Ch 25; *Manchester School Case* (1867) 2 Ch App 497; and see *Berkhamstead School Case* (1865) LR 1 Eq 102.

4 *Re Whitworth Art Gallery Trusts, Manchester Whitworth Institute v Victoria University of Manchester* [1958] Ch 461, [1958] 1 All ER 176; *Clephane v Edinburgh Corp'n* (1869) LR 1 Sc & Div 417, HL.

5 *Green v Rutherford* (1750) 1 Ves Sen 462 at 468 per Lord Hardwicke LC; *A-G v Governors of Foundling Hospital* (1793) 2 Ves 42; *A-G v Earl of Mansfield* (1827) 2 Russ 501; *A-G v Smythies* (1833) 2 Russ & M 717 at 749 per Lord Brougham LC; *A-G v Wyggeston Hospital* (1849) 12 Beav 113 at 123 per Lord Langdale MR; and see *A-G v St John's Hospital, Bedford* (1865) 2 De GJ & Sm 621.

6 *A-G v Bedford Corp'n* (1754) 2 Ves Sen 505.

7 As to cy-près schemes see PARA 208 et seq.

8 See the Charities Act 1993 s 15(1); and PARA 182.

9 See the Charities Act 1993 s 15(2); and PARA 182.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/534. Charity regulated by statute.

534. Charity regulated by statute.

If there were an institution established and regulated in every respect by statute, the court would have no jurisdiction to interfere in its administration, notwithstanding that its purposes were charitable¹, unless the statute gave the court such jurisdiction². However, the court may make a scheme in respect of matters not provided for by the statute³ or in aid of and supplemental to the provisions of the statute⁴, and may enforce the observance of those provisions⁵.

Certain statutes are declared not to exclude or restrict the court's jurisdiction with respect to charities, so that the court can make schemes superseding the statutory provisions⁶.

The Charity Commission, but not the court, may make schemes (which are put into effect by statutory instrument) amending statutory provisions⁷.

1 Cf *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324. See also *London Parochial Charities Trustees v A-G* [1955] 1 All ER 1, [1955] 1 WLR 42; *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA.

2 *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324 at 331 per Lord Cottenham LC; *Ex p Bolton* (1789) 2 Bro CC 662; *Re Bedford Charity* (1833) 5 Sim 578. In *London Parochial Charities Trustees v A-G* [1955] 1 All ER 1, [1955] 1 WLR 42, the regulating scheme, which had statutory force, gave the Charity Commissioners (now the Charity Commission) power to make modifying schemes. Such provisions are not uncommon. As to the Charity Commissioners see PARA 538.

3 *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324.

4 *Re Shipwrecked Fishermen and Mariners' Royal Benevolent Society* [1959] Ch 220, [1958] 3 All ER 465.

5 *A-G v Wyggeston Hospital* (1849) 12 Beav 113. For the distinction between charities established by gifts, but with no regulations as to their exercise, in which cases the court has a general jurisdiction, and charities established and regulated by charter or Act of Parliament, in which cases the court only has jurisdiction in case of abuse: see *Chitty's Prerogatives of the Crown* (1820) 161; 3 Bl Com (14th Edn) 426-427.

6 See the Charities Act 1993 s 15(3), Sch 4; and PARA 183.

7 See the Charities Act 1993 s 17; and PARAS 191-192. As to the Charity Commission see PARAS 538-572.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/535. When the court will interfere.

535. When the court will interfere.

The court does not interfere with the execution of a charitable trust unless it appears that its interference will benefit the charity¹. However, the court has a general controlling power over all charitable institutions². Thus it can always enforce the performance of trusts and redress breaches of trust, whether the trustee is an individual or an eleemosynary corporation³, and whether or not the corporation is subject to the control of a visitor⁴. On this ground it exercises jurisdiction with respect to the dealings and conduct of governors who receive and apply the revenues of charity property or manage charity estates⁵.

Accordingly, the court may set aside a lease of charity property to one of the governors, though there is no suggestion that the transaction was fraudulent⁶, and interfere when a school chapel is turned into a chapel of ease⁷, and where the master of a school is collusively appointed and takes his salary without fulfilling the duties of his post⁸. On rare occasions it may be appropriate to appoint a receiver or receiver and manager of a charity⁹.

1 *A-G v Bosanquet* (1841) 11 LJCh 43.

2 See *A-G v Governors of Foundling Hospital* (1793) 2 Ves 42 at 49.

3 *Green v Rutherford* (1750) 1 Ves Sen 462 at 475 per Lord Hardwicke LC; *Re Chertsey Market, ex p Walthew* (1819) 6 Price 261; *A-G v Earl of Clarendon* (1810) 17 Ves 491; *A-G v Earl of Mansfield* (1827) 2 Russ 501; *A-G v Lubbock* (1837) Coop Pr Cas 15; *A-G v Dedham School* (1857) 23 Beav 350; *A-G v St Cross Hospital* (1853) 17 Beav 435; *Willis v Childe* (1851) 13 Beav 117; and see also *A-G v Bedford Corp* (1754) 2 Ves Sen 505. As to eleemosynary corporations see PARA 224.

4 *Daugars v Rivaz* (1860) 28 Beav 233; see also the cases cited in note 3.

5 *Eden v Foster* (1726) 2 P Wms 325; *A-G v Lock* (1744) 3 Atk 164 at 165 per Lord Hardwicke LC; *A-G v Governors of Foundling Hospital* (1793) 2 Ves 42; *A-G v Middleton* (1751) 2 Ves Sen 327; *Ex p Kirkby Ravensworth Hospital* (1808) 15 Ves 305 at 314 per Lord Eldon LC; and note *Hynshaw v Morpeth Corp* (1629) Duke 69; and *Sutton Colefield Case* (1635) Duke 68.

6 *A-G v Earl of Clarendon* (1810) 17 Ves 491.

7 *A-G v Earl of Mansfield* (1827) 2 Russ 501.

8 *A-G v Bedford Corp* (1754) 2 Ves Sen 505.

9 *A-G v Schonfeld* [1980] 3 All ER 1, [1980] 1 WLR 1182. As to the statutory power of the Charity Commission to appoint a receiver and manager see PARA 562. As to the Charity Commission see PARAS 538-572. As to receivers generally see **RECEIVERS**.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/536. Jurisdiction not excluded by special remedies.

536. Jurisdiction not excluded by special remedies.

The fact that special remedies are given by a statute to another authority or under a special procedure for the infringement of a right does not exclude the ordinary jurisdiction of the court, unless that jurisdiction is expressly excluded by the statute¹.

¹ *R v Bishop of Ely* (1738) Andr 176; *Dr Walker's Case* (1736) Lee temp Hard 212 at 218 per Lord Hardwicke LC. See also PARA 228 note 2.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(3) THE COURTS/537. County court jurisdiction.

537. County court jurisdiction.

The county court has jurisdiction in proceedings for the execution of a charitable trust, or for a declaration that a charitable trust subsists, where the fund subject to the trust does not exceed the county court limit¹. It is doubtful whether it will ever be called upon to exercise this jurisdiction.

¹ See the County Courts Act 1984 s 23(b); and **COURTS**. 'County court limit' for the purposes of s 23 is £30,000: see s 147(1) (definition amended by SI 1991/724); the County Courts Jurisdiction Order 1981, SI 1981/1123, art 2, Table (amended by SI 1991/724); and the Interpretation Act 1978 s 17(2)(b). Subject to the financial limit, the county court is included within the definition of 'court' in the Charities Act 1993 s 97(1); see PARA 175 note 12. It also has jurisdiction under the Open Spaces Act 1906 s 4 to sanction the transfer of an open space within its district by charity trustees to the local authority: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 574.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/538. The Charity Commission.

(4) THE CHARITY COMMISSION

(i) Constitution and Functions

538. The Charity Commission.

The Charity Commission for England and Wales is a statutory body regulated by the Charities Act 1993 with functions under that and other Acts¹. The functions of the Charity Commission are performed on behalf of the Crown² and, in the exercise of its functions, the Commission is not subject to the direction or control of any Minister of the Crown or other government department³.

The Commission has a number of statutory objectives⁴, functions⁵ and duties⁶. The Commission has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties⁷.

However, the Commission must not exercise functions corresponding to those of a charity trustee in relation to a charity or otherwise be directly involved in the administration of a charity⁸.

1 See the Charities Act 1993 s 1A (added by the Charities Act 2006 s 6(1)). Prior to 27 February 2007, all regulatory powers and duties were vested in the statutory offices of the Charity Commissioners for England and Wales, but on this day the office of Charity Commissioner was abolished and the functions, property, rights and liabilities of the Charity Commissioners transferred to a newly established body corporate, the Charity Commission for England and Wales: see the Charities Act 1993 s 1A(1) (as so added); and the Charities Act 2006 s 6(3), (4). Any enactment or document has effect, so far as necessary for the purposes of or in consequence of the transfer effected by s 6(4), as if any reference to the Charity Commissioners for England and Wales or to any Charity Commissioner for England and Wales were a reference to the Charity Commission for England and Wales: s 6(5).

In Welsh, the Commission is known as 'Comisiwn Elusennau Cymru a Lloegr': Charities Act 1993 s 1A(2) (as so added).

Anything which has been done, or has effect as if done, by or in relation to the Commissioners, and is in effect immediately before the coming into force of the Charities Act 2006 s 6 is to be treated as if done by or in relation to the Commission: Sch 2 paras 1, 3(1). Anything, including legal proceedings, which relates to anything transferred by s 6(4) and is in the process of being done by or in relation to the Commissioners, may be continued by or in relation to the Commission: Sch 2 para 3(2). However, nothing in s 6 or Sch 2 para 3 affects the validity of anything done by or in relation to the Commissioners: Sch 2 paras 1, 3(3). 'Commissioners' means the Charity Commissioners for England and Wales, and includes any person acting for them by virtue of the Charities Act 1993 Sch 1 para 3(3) (repealed): Charities Act 2006 Sch 2 para 3(4).

The Charity Commission is a designated regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see Sch 5; and **ADMINISTRATIVE LAW**.

2 Charities Act 1993 s 1A(3) (as added: see note 1).

3 Charities Act 1993 s 1A(4) (as added: see note 1). However, s 1A(4) does not affect any provision made by or under any enactment or any administrative control exercised over the Commission's expenditure by the Treasury: s 1A(5) (as so added).

4 See the Charities Act 1993 s 1B; and PARA 539.

5 See the Charities Act 1993 s 1C; and PARA 540.

6 See the Charities Act 1993 s 1D; and PARA 541.

7 Charities Act 1993 s 1E(1) (added by the Charities Act 2006 s 7).

8 Charities Act 1993 s 1E(2) (as added: see note 7). However, this does not affect the power of the Commission to give directions as to action to be taken or as to application of charity property under ss 19A-19B: s 1E(3) (as so added). As to the power to give such directions see PARAS 561, 565.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/539. Statutory objectives.

539. Statutory objectives.

The Charity Commission has the following statutory objectives¹:

- 417 (1) the public confidence objective², which is to increase public trust and confidence in charities³;
- 418 (2) the public benefit objective⁴, which is to promote awareness and understanding of the operation of the public benefit requirement⁵;
- 419 (3) the compliance objective⁶, which is to promote compliance by charity trustees⁷ with their legal obligations in exercising control and management of the administration of their charities⁸;
- 420 (4) the charity resources objective⁹, which is to promote the effective use of charitable resources¹⁰; and
- 421 (5) the accountability objective¹¹, which is to enhance the accountability of charities to donors, beneficiaries and the general public¹².

- 1 Charities Act 1993 s 1B(1) (added by the Charities Act 2006 s 7).
- 2 Charities Act 1993 s 1B(2)(1) (as added: see note 1). As to the meaning of 'charity' see PARA 1.
- 3 Charities Act 1993 s 1B(3)(1) (as added: see note 1).
- 4 Charities Act 1993 s 1B(2)(2) (as added: see note 1).
- 5 Charities Act 1993 s 1B(3)(2) (as added: see note 1). 'Public benefit requirement' means the requirement in the Charities Act 2006 s 2(1)(b) that a purpose falling within the Charities Act 1993 s 2(2) must be for the public benefit if it is to be a charitable purpose: Charities Act 1993 s 1B(4) (as added: see note 1); and see PARA 6.
- 6 Charities Act 1993 s 1B(2)(3) (as added: see note 1).
- 7 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 8 Charities Act 1993 s 1B(3)(3) (as added: see note 1).
- 9 Charities Act 1993 s 1B(2)(4) (as added: see note 1).
- 10 Charities Act 1993 s 1B(3)(4) (as added: see note 1).
- 11 Charities Act 1993 s 1B(2)(5) (as added: see note 1).
- 12 Charities Act 1993 s 1B(3)(5) (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/540. General statutory functions.

540. General statutory functions.

The Charity Commission has the following statutory general functions¹:

- 422 (1) determining whether institutions are or are not charities²;
- 423 (2) encouraging and facilitating the better administration of charities³;
- 424 (3) identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein⁴;
- 425 (4) obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives⁵, including, among other things, the maintenance of an accurate and up-to-date register of charities⁶; and
- 426 (5) giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission's functions or meeting any of its objectives⁷, including among other things, complying, so far as is reasonably practicable, with any request made by a Minister of the Crown for information or advice on any matter relating to any of its functions⁸.

As from a day to be appointed⁹, the Commission will also have the statutory general function of determining whether public collections certificates should be issued, and remain in force, in respect of public charitable collections¹⁰.

1 Charities Act 1993 s 1C(1) (added by the Charities Act 2006 s 7).

- 2 Charities Act 1993 s 1C(2) para 1 (as added: see note 1).
- 3 Charities Act 1993 s 1C(2) para 2 (as added: see note 1).
- 4 Charities Act 1993 s 1C(2) para 3 (as added: see note 1).
- 5 Charities Act 1993 s 1C(2) para 5 (as added: see note 1).
- 6 Charities Act 1993 s 1C(3) (as added: see note 1). As to the register of charities see s 3; and PARAS 304-317.
- 7 Charities Act 1993 s 1C(2) para 6 (as added: see note 1).
- 8 Charities Act 1993 s 1C(4) (as added: see note 1).
- 9 The Charities Act 1993 s 1C(2) para 4, (5) come into force by order made under the Charities Act 2006 s 79(2). At the date at which this volume states the law no such day had been appointed.
- 10 Charities Act 1993 s 1C(2) para 4 (as added: see note 1). 'Public charitable collection' and 'public collections certificate' have the same meanings as in the Charities Act 2006 Pt 3 Ch 1 (see PARA 491); Charities Act 1993 s 1C(5) (as so added). As to public charitable collections see PARA 491 et seq. As to public collections certificates see PARAS 492.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/541. General duties.

541. General duties.

The Charity Commission has a number of statutory general duties¹. So far as is reasonably practicable, it must, in performing its functions, act in a way which is (1) compatible with its objectives, and which it considers most appropriate for the purpose of meeting those objectives²; and (2) compatible with the encouragement of all forms of charitable giving, and voluntary participation in charity work³. In performing its functions, the Commission must have regard to: (a) the need to use its resources in the most efficient, effective and economic way⁴; (b) so far as relevant, the principles of best regulatory practice, including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed⁵; and (c) in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities⁶. In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it⁷.

- 1 See the Charities Act 1993 s 1D(1), (2) (added by the Charities Act 2006 s 7).
- 2 Charities Act 1993 s 1D(2) para 1 (as added: see note 1).
- 3 Charities Act 1993 s 1D(2) para 2 (as added: see note 1).
- 4 Charities Act 1993 s 1D(2) para 3 (as added: see note 1).
- 5 Charities Act 1993 s 1D(2) para 4 (as added: see note 1).
- 6 Charities Act 1993 s 1D(2) para 5 (as added: see note 1).
- 7 Charities Act 1993 s 1D(2) para 6 (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/542. Publications issued by the Charity Commission.

542. Publications issued by the Charity Commission.

The Charity Commission produces publications, audio-cassettes and CDs which provide information on a wide range of issues which affect charities, including the Commission's role, the duties of charity trustees and charity law. Such materials are available from the Commission¹. The publications include leaflets which give information and guidance in relation to, for example, charity trustees², charity accounts³, registration⁴, investment⁵ and fund raising⁶. The Commission also publishes the technical publication the *Statement of Recommended Practice for Accounting and Reporting by Charities* (the 'SORP')⁷ and various associated documents which set out the recommended best practice and guidance for charities in relation to the preparation of financial reports and accounts.

On behalf of the Charity Commission, The Stationery Office publishes the annual report the Charity Commission is under a duty to make to Parliament on its operations during the year⁸. Previously The Stationery Office also published the Decisions of the Charity Commissioners⁹, which include decisions on points of law and individual cases, and guidance on matters of practice or policy in areas where there is no leaflet available on the subject; decisions made after August 2001 are now published by the Commission on its website¹⁰.

1 For a list of the range of publications available from the Charity Commission see the Charity Commission website at www.charitycommission.gov.uk.

2 As to trustees see PARA 328 et seq.

3 As to the duties of charity trustees in relation to accounts see PARA 350 et seq.

4 As to the registration of charities see PARA 304 et seq.

5 As to the duties of charity trustees in relation to investment see PARA 412 et seq.

6 As to the control of charitable fund raising see PARA 460 et seq.

7 The second edition of the SORP was issued in 2005 by the Charity Commission, and revised and reissued in May 2008.

8 The reports are published as House of Commons Parliamentary Papers, before 2007 under the titles *Report of the Charity Commissioners for England and Wales* for the appropriate year, and from 2007 onwards under the titles *Report of the Charity Commission for England and Wales* for the appropriate year. See PARA 546.

9 As to the Charity Commissioners see PARA 538.

10 See note 1.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/543. Constitution.

543. Constitution.

The Charity Commission consists of a chairman and at least four, but not more than eight, other members¹. The members must be appointed by the Minister², who must exercise his power of appointment so as to secure that: (1) the knowledge and experience of the members

of the Commission (taken together) includes knowledge and experience of the law relating to charities, charity accounts and the financing of charities and the operation and regulation of charities of different sizes and descriptions³; (2) at least two of the members must have a seven year general qualification⁴; and (3) at least one member, excluding the chairman, must know about conditions in Wales and have been appointed following the necessary consultation requirements⁵. The members of the Commission must hold and vacate office as such in accordance with the terms of their respective appointments⁶, and an appointment of a person to hold office as a member of the Commission shall be for a term not exceeding three years⁷. No person may hold office as a member of the Commission for more than ten years in total⁸. The Commission must pay to its members such remuneration, and such other allowances, as may be determined by the Minister⁹.

The Commission must appoint a chief executive and may appoint such other staff as it may determine¹⁰. It may establish committees and any of its committees may establish sub-committees¹¹. The members of a committee may include persons who are not members of the Commission, and the members of a sub-committee may include persons who are not members of the committee or of the Commission¹².

The Commission may regulate its own procedure, including quorum¹³. The validity of anything done by the Commission is not affected by a vacancy among its members or by a defect in the appointment of a member¹⁴. Anything authorised or required to be done by the Commission may be done by (a) any member or member of staff of the Commission who is authorised by it for that purpose, whether generally or specially¹⁵; or (b) any committee of the Commission which has been so authorised¹⁶.

1 Charities Act 1993 Sch 1A para 1(1) (Sch 1A added by the Charities Act 2006 Sch 1). The person who immediately before the coming into force of s 6 was the Chief Charity Commissioner for England and Wales became the chairman of the Commission as if so appointed, and any other person who at that time was a Charity Commissioner for England and Wales became a member of the Commission as if so appointed: Sch 2 paras 1, 2(1), (2). A person who holds office as a member of the Commission by virtue of this provision continues to be deemed to be employed in the civil service of the Crown and hold that office on the terms on which he held office as a Charity Commissioner for England and Wales immediately before the coming into force of s 6: Sch 2 para 2(1), (3). However, this is subject to any necessary modifications to the terms in questions and to the following restrictions: (1) no person may hold office as a member of the Commission by virtue of Sch 2 para 2(1) or (2) for a term exceeding three years from the coming into force of s 6 (Sch 2 para 2(5)); and (2) no person may hold such office for more than ten years in total (see text and note 8): see Sch 2 para 2(4). The provisions of the Charities Act 1993 relating to terms of appointment to the Commission, length of term of office and resignation or removal from office (ie the Charities Act 1993 Sch 1A paras 2, 3(1)-(3) (see notes 6-7)) do not apply in relation to a person while he holds office as a member of the Commission by virtue of these provisions: Charities Act 2006 Sch 2 para 2(6).

2 Charities Act 1993 Sch 1A para 1(2) (as added: see note 1).

3 Charities Act 1993 Sch 1A para 1(3)(a), (4) (as added: see note 1).

4 Charities Act 1993 Sch 1A para 1(3)(b) (as added: see note 1). The seven year general qualification is a qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see **LEGAL PROFESSIONS** vol 65 (2008) PARA 742).

5 Charities Act 1993 Sch 1A para 1(3)(c) (as added: see note 1).

6 Charities Act 1993 Sch 1A para 2 (as added: see note 1).

7 Charities Act 1993 Sch 1A para 3(1) (as added: see note 1). A person holding office as a member of the Commission may resign that office by giving notice in writing to the Minister, and may be removed from office by the Minister on the ground of incapacity or misbehaviour: Sch 1A para 3(2) (as so added). However, before removing a member of the Commission the Minister must consult the Commission and, if the member was appointed following consultation with the National Assembly for Wales, the Assembly: Sch 1A para 3(3) (as so added). As to the Minister see PARA 580.

8 Charities Act 1993 Sch 1A para 3(4) (as added: see note 1). Time spent holding office as a Charity Commissioner for England and Wales is counted as time spent holding office as a member of the Commission: Sch 1A para 3(5) (as so added). As to the Charity Commissioners see PARA 538.

9 Charities Act 1993 Sch 1A para 4(1) (as added: see note 1). In addition, if required to do so by the Minister, the Commission must pay such pension, allowances or gratuities as may be determined by the Minister to or in respect of a person who is or has been a member of the Commission, or make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person: Sch 1A para 4(2) (as so added). If the Minister determines that there are special circumstances which make it right for a person ceasing to hold office as a member of the Commission to receive compensation, the Commission must pay to him a sum by way of compensation of such amount as may be determined by the Minister: Sch 1A para 4(3) (as so added).

10 Charities Act 1993 Sch 1A para 5(1) (as added: see note 1). The terms and conditions of service of persons so appointed are to be such as the Commission may determine with the approval of the Minister for the Civil Service: Sch 1A para 5(2) (as so added).

11 Charities Act 1993 Sch 1A para 6(1) (as added: see note 1).

12 Charities Act 1993 Sch 1A para 6(2) (as added: see note 1).

13 Charities Act 1993 Sch 1A para 7(1) (as added: see note 1).

14 Charities Act 1993 Sch 1A para 7(2) (as added: see note 1).

15 Charities Act 1993 Sch 1A para 8(a) (as added: see note 1).

16 Charities Act 1993 Sch 1A para 8(b) (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/544. Documents.

544. Documents.

Prima facie evidence of any proclamation, order, or regulation, including any document¹, issued by or under the authority of the Charity Commission may be given in all courts of justice, and in all legal proceedings whatsoever².

A document is executed by the Commission by the fixing of its common seal to the document³, but the fixing of that seal to a document must be authenticated by the signature of any member of the Commission, or any member of its staff, who is authorised for the purpose by the Commission⁴. A document which is expressed (in whatever form of words) to be so executed and is so signed has the same effect as if so executed⁵. A document executed by the Commission which makes it clear on its face that it is intended to be a deed has effect, upon delivery, as a deed; and it is to be presumed (unless a contrary intention is proved) to be delivered upon its being executed⁶. In favour of a purchaser⁷, a document is to be deemed to have been duly executed by the Commission if it purports to be signed on its behalf by any member of the Commission or any member of its staff, and, where it makes it clear on its face that it is intended to be a deed, it is to be deemed to have been delivered upon its being executed⁸.

1 See the Documentary Evidence Act 1868 s 2, Schedule; Charities Act 1993 Sch 1A para 9(c) (Sch 1A added by the Charities Act 2006 Sch 1); and **CIVIL PROCEDURE** vol 11 (2009) PARAS 889, 892.

2 See the Documentary Evidence Act 1868 s 2, Schedule; Charities Act 1993 Sch 1A para 9(a)-(b) (as added: see note 1); and **CIVIL PROCEDURE** vol 11 (2009) PARAS 889, 892.

3 Charities Act 1993 Sch 1A para 10(1) (as added: see note 1).

4 Charities Act 1993 Sch 1A para 10(2) (as added: see note 1). 'Authorised' means authorised whether generally or specially: Sch 1A para 10(6) (as so added).

5 Charities Act 1993 Sch 1A para 10(3) (as added: see note 1).

6 Charities Act 1993 Sch 1A para 10(4) (as added: see note 1).

7 'Purchaser' means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquired an interest in property: Sch 1A para 10(6) (as added: see note 1).

8 Charities Act 1993 Sch 1A para 10(5) (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/545. Jurisdiction.

545. Jurisdiction.

Any institution which is a charity within the statutory definition¹ is subject to the jurisdiction of the Charity Commission, but many of the specific powers given to the Commission are not exercisable in relation to exempt charities². It may direct that institutions³ established for special charitable purposes⁴ of or in connection with a charity be treated for all or any of the purposes of the Charities Act 1993 as part of that charity or as forming a distinct charity⁵. They may also direct that for all or any of the purposes of the Charities Act 1993 two or more charities having the same charity trustees⁶ are to be treated as a single charity⁷.

An appeal against a decision of the Commission not to give such a direction in relation to an institution or charity lies to the Tribunal⁸ at the instance of the Attorney General and the trustees of the institution or charity concerned⁹. The Tribunal has the power to quash the decision and, if appropriate, remit the matter to the Commission¹⁰.

1 See the Charities Act 1993 s 96(1), (2); and PARAS 1, 194. As to territorial limitations on the operation of the Charities Act 1993 (which does not generally extend to Scotland or Northern Ireland) see s 100(2)-(4) (amended by the Charities Act 2006 ss 23(5), 75(1), Sch 8 para 176); and cf *Re Duncan, Re Taylor's Trusts* (1867) 2 Ch App 356; *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA.

2 See eg the Charities Act 1993 s 3A(2)(a) (see PARA 315), s 8(1) (see PARA 554), s 9(4) (see PARA 557), s 33(2) (see PARA 588), s 38(7) (see PARA 398). As to exempt charities see PARAS 315-317. However, note that a number of these powers are as from a day to be appointed exercisable in relation to exempt charities; see PARA 316.

3 As to the meaning of 'institution' see PARA 1.

4 As to the meaning of 'charitable purposes' see para 2.

5 Charities Act 1993 s 96(5) (amended by the Charities Act 2006 Sch 8 para 173(4)).

6 As to the meaning of 'charity trustees' see PARA 1 note 10.

7 Charities Act 1993 s 96(6) (added by Charities (Amendment) Act 1995 s 1; and amended by the Charities Act 2006 Sch 8 para 173(4)).

8 As to the Tribunal see PARA 573 et seq.

9 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

10 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/546. Duty to report.

546. Duty to report.

The Charity Commission¹ is required, as soon as practicable after the end of each financial year², to publish a report, on the following matters during that year³: (1) the discharge of its functions⁴; (2) the extent to which, in its opinion, its objectives have been met⁵; (3) the performance of its general duties⁶; and (4) the management of its affairs⁷.

The Charity Commission is subject to investigation by the Parliamentary Commissioner for Administration⁸.

1 As to the Charity Commission see PARAS 538-572.

2 'Financial year' means the period beginning with the date on which the Commission is established and ending with the next 31 March following that day, and each successive period of 12 months ending with 31 March: Charities Act 1993 s 1A(6), Sch 1A para 11(3) (both added by the Charities Act 2006 s 6, Sch 1).

3 Charities Act 1993 s 1A(6), Sch 1A para 11(1) (both as added: see note 2). The reports are published as House of Commons Parliamentary Papers, under the titles *Report of the Charity Commission for England and Wales* for the appropriate year.

4 Charities Act 1993 s 1A(6), Sch 1A para 11(1)(a) (both as added: see note 2).

5 Charities Act 1993 s 1A(6), Sch 1A para 11(1)(b) (both as added: see note 2). As to the Commission's general objectives see s 1B; and PARA 539.

6 Charities Act 1993 s 1A(6), Sch 1A para 11(1)(c) (both as added: see note 2).

7 Charities Act 1993 s 1A(6), Sch 1A para 11(1)(d) (both as added: see note 2). The first report published by the Commission was also required to be a report on the operations of the Charity Commissioners during the period 1 April 2006 (the day following the last report of the Charity Commissioners) to 26 February 2007 (the day before the Commissioners were abolished): Charities Act 2006 s 6(7), Sch 2 para 4.

8 See the Parliamentary Commissioner Act 1967 s 4(1), Sch 2; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARAS 41, 43.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/547. Annual public meeting.

547. Annual public meeting.

The Charity Commission¹ is required to hold an annual public meeting for the purpose of enabling its annual report² to be considered³. The meeting must be held within the period of three months beginning with the day on which the report is published⁴. The Commission must organise the annual meeting so as to allow a general discussion of the contents of the report which is being considered and a reasonable opportunity for those attending the meeting to put questions to the Commission about matters to which the report relates⁵. Subject to these restrictions, the annual meeting is to be organised and conducted in such a way as the Commission considers appropriate⁶.

The Commission must take such steps as are reasonable in the circumstances to ensure that notice of the annual meeting is given to every registered charity and publish notice of the annual meeting in the way appearing to it to be best calculated to bring it to the attention of members of the public⁷, each such notice giving details of the time and place at which the meeting is to be held, setting out the proposed agenda for the meeting, indicating the proposed duration of the meeting and giving details of the Commission's arrangements for enabling persons to attend⁸. If the Commission proposes to alter any of the arrangements which have been included in such notices it must give reasonable notice of the alteration and publish the notice in the way appearing to it to be best calculated to bring it to the attention of registered charities and members of the public⁹.

- 1 As to the Charity Commission see PARAS 538-572
- 2 le the report that must be made under the Charities Act 1993 s 1A(6), Sch 1A para 11(1): see PARA 546.
- 3 Charities Act 1993 s 1A(6), Sch 1A para 12(1) (both added by the Charities Act 2006 s 6, Sch 1).
- 4 Charities Act 1993 s 1A(6), Sch 1A para 12(2) (both as added: see note 3).
- 5 Charities Act 1993 s 1A(6), Sch 1A para 12(3) (both as added: see note 3).
- 6 Charities Act 1993 s 1A(6), Sch 1A para 12(4) (both as added: see note 3).
- 7 Charities Act 1993 s 1A(6), Sch 1A para 12(5) (both as added: see note 3).
- 8 Charities Act 1993 s 1A(6), Sch 1A para 12(6) (both as added: see note 3).
- 9 Charities Act 1993 s 1A(6), Sch 1A para 12(7) (both as added: see note 3).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/548. Specific functions under the Charities Act 1993.

548. Specific functions under the Charities Act 1993.

The Charity Commission¹ has a number of specific functions and powers under the Charities Act 1993, which are dealt with elsewhere in this title:

- 427 (1) the duty to maintain the central register of charities² and duties in relation to registration³;
- 428 (2) the power to exchange information with regard to institutions treated as charitable⁴;
- 429 (3) the jurisdiction to make schemes, to appoint and remove trustees and officers and to make vesting orders in relation to charities⁵;
- 430 (4) the power to make common investment schemes or common deposit funds⁶;
- 431 (5) the power to authorise beneficial transactions⁷;
- 432 (6) the power to authorise ex gratia payments etc⁸;
- 433 (7) the power to give directions about dormant bank accounts⁹;
- 434 (8) the power to give advice to charity trustees¹⁰;
- 435 (9) the power to determine membership of a charity¹¹;
- 436 (10) the power to provide for the enrolment and preservation of documents belonging to charities¹²;
- 437 (11) the power to order the taxation of a solicitor's bill of costs for work done for a charity¹³;
- 438 (12) powers to take legal proceedings and compromise claims¹⁴;

- 439 (13) the requirement of its consent to the taking of charity proceedings¹⁵;
- 440 (14) the requirement of its consent to the expenditure of charity money on promoting legislation in Parliament¹⁶;
- 441 (15) the requirement of its consent to certain dispositions of charity property¹⁷;
- 442 (16) the power to relieve trustees and others from liability for breach of trust of duty¹⁸;
- 443 (17) the power to amend certificates of incorporation¹⁹;
- 444 (18) the power to dissolve defunct incorporated bodies²⁰;
- 445 (19) the requirement of its consent for certain matters relating to charitable companies²¹;
- 446 (21) the duty to establish and maintain a register of charity mergers and associated duties²²;
- 447 (20) as from a day to be appointed, the duties and powers relating to the registration and constitution of charitable incorporated organisation's²³.

It also has various powers to act for the protection of charities by inquiry, audit, calling for documents, entering premises and seizing documents, and by giving specific directions and making orders in consequence of their investigations²⁴.

- 1 As to the Charity Commission see PARAS 538-572
- 2 As to the meaning of 'charities' see PARA 1.
- 3 See the Charities Act 1993 ss 3-3A; and PARAS 304-305.
- 4 See the Charities Act 1993 ss 10-10C; and PARAS 313-318.
- 5 See the Charities Act 1993 s 16; and PARAS 187, 189-190, 295.
- 6 See the Charities Act 1993 ss 24, 25; and PARAS 419-420.
- 7 See the Charities Act 1993 s 26; and PARAS 381-384.
- 8 See the Charities Act 1993 s 27; and PARA 423.
- 9 See the Charities Act 1993 s 28; and PARA 569.
- 10 See the Charities Act 1993 s 29; and PARAS 387-388.
- 11 See the Charities Act 1993 s 29A; and PARA 570.
- 12 See the Charities Act 1993 s 30; and PARAS 392-393.
- 13 See the Charities Act 1993 s 31; and PARA 642.
- 14 See the Charities Act 1993 s 32; and PARA 553.
- 15 See the Charities Act 1993 s 33; and PARA 588.
- 16 See the Charities Act 1993 s 17(7); and PARA 328.
- 17 See the Charities Act 1993 s 36; and PARA 395.
- 18 See the Charities Act 1993 s 73D; and PARA 447.
- 19 See the Charities Act 1993 s 56; and PARA 260.
- 20 See the Charities Act 1993 s 61; and PARA 262.
- 21 See the Charities Act 1993 ss 66, 66A; and PARA 239.
- 22 See the Charities Act 1993 s 75C-D; and PARA 319.

23 See the Charities Act 1993 ss 69E-69P (not yet in force), Sch 5B para 15 (not yet in force); and PARAS 240-246, 248-249.

24 See the Charities Act 1993 ss 8, 9, 18, 18A, 19A, 19B, 31A, 69; and PARAS 553-568. As to the exclusion of actions in negligence see *Mills v Winchester Diocesan Board of Finance* [1989] Ch 428, [1989] 2 All ER 317; and PARA 387.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/549. Ancillary provisions as to Charity Commission orders.

549. Ancillary provisions as to Charity Commission orders.

The Charities Act 1993 contains various ancillary provisions in relation to any order made under that Act by the Charity Commission¹. Thus, an order made by the Commission may include such incidental or supplementary provisions as it thinks expedient for carrying into effect the objects of the order, and where the Commission exercises any jurisdiction to make such an order on an application or reference to them, it may insert any such provisions in the order notwithstanding that the application or reference does not propose their insertion². Where the Commission makes an order under the Charities Act 1993, then it may itself give such public notice as it thinks fit of the making or contents of the order, or may require it to be given by any person on whose application the order is made or by any charity³ affected by the order⁴.

Except for the purposes of discharging the order⁵, or for the purposes of an appeal under the relevant Act, an order made by the Commission under the Charities Act 1993 is deemed to have been duly and formally made and is not to be called in question on the ground only of irregularity or informality, and, subject to any further order, has effect according to its tenor⁶.

Any order made by the Commission under any provision of the Charities Act 1993 may be varied or revoked by a subsequent order so made⁷.

Any direction⁸ given by the Commission⁹ under any provision contained in the Charities Act 1993 must be given in writing, and may be varied or revoked by a further direction given under that provision¹⁰.

At any time within 12 months of making an order under the Charities Act 1993, the Commission, if it is satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with Charities Act 1993, may with or without any application or reference to it discharge the order in whole or in part, and subject or not to any savings or other transitional provisions¹¹.

1 The provisions of the Charities Act 1993 s 89 (see the text and notes 2-7) also apply to orders under:

54 (1) the Places of Worship Registration Act 1855 s 9(1)(b) (see s 9(2); and **ECCLESIASTICAL LAW** vol 14 PARA 1410);

55 (2) the Open Spaces Act 1906 s 4 (see s 4(4); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 574); and

56 (3) the New Parishes Measure 1943 s 14(1)(b) (see s 14(4); and **ECCLESIASTICAL LAW** vol 14 PARA 1410)).

2 Charities Act 1993 s 89(1) (amended by the Charities Act 2006 Sch 8 para 168(2)).

3 As to the meaning of 'charity' see PARA 1.

4 Charities Act 1993 s 89(2) (amended by the Charities Act 2006 Sch 8 para 168(3)). This is without prejudice to the requirements of the Charities Act 1993 in a case where the order is subject to appeal: s 89(2).

5 le under the Charities Act 1993 s 89(3): see the text and note 11.

6 Charities Act 1993 s 89(4) (amended by the Charities Act 1993 Sch 8 para 168(5)).

7 Charities Act 1993 s 89(5) (added by the Charities Act 1993 Sch 8 para 168(6)).

8 Except a direction contained in an order made by the Commission under the Charities Act 1993 s 87(1) (see PARA 551): s 90(4) (amended by the Charities At 2006 Sch 8 para 169).

9 For these purposes, the reference to the Commission includes, in relation to a direction under the Charities Act 1993 s 8(3) (see PARA 554), a reference to a person conducting an inquiry under that provision: s 90(3) (s 90 amended by the Charities Act 2006 Sch 8 para 168(4)).

10 Charities Act 1993 s 90(1) (as amended: see note 9). The Charities Act 1993 s 88 (see PARA 551) (enforcement of orders of the Commission) and s 89(1), (2) and (4) (see the text and notes 2-6) apply to any such directions as they apply to an order of the Commission: s 90(2) (as so amended).

11 Charities Act 1993 s 89(3) (amended by the Charities Act 2006 Sch 8 para 168(4)). This does not apply to an order under the Charities Act 1993 s 61 (see PARA 262): see s 89(3) (as so amended).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/550. Service of orders and directions.

550. Service of orders and directions.

Any order or direction made or given by the Charity Commission¹ under the Charities Act 1993 may be served on a person (other than a body corporate) either by delivering it to that person, or by leaving it at his last known address in the United Kingdom², or by sending it by post to him at that address³. In the case of a body corporate it may be served by delivering it or sending it by post either to the registered or principal office of the body in the United Kingdom, or, if it has no such office in the United Kingdom, to any place in the United Kingdom where it carries on business or conducts its activities⁴. Any such order or direction may also be served on a person, including a body corporate, by sending it by post to that person at an address notified by that person to the Commission for that purpose⁵.

1 For these purposes, the reference to the Commission includes, in relation to a direction under the Charities Act 1993 s 8(3) (see PARA 554), a reference to a person conducting an inquiry under that provision: s 91(5) (s 91 amended by the Charities Act 2006 s 75(1), Sch 8 para 170).

2 As to the meaning of 'United Kingdom' see PARA 187 note 17.

3 Charities Act 1993 s 91(1), (2) (s 91(1) as amended: see note 1). There are corresponding provisions in relation to any order or direction made or given by the Commission under the Charities Act 1992 Pt II (ss 58-64) or any notice required to be served under Pt 3 (ss 65-74) (not yet in force): see s 76(1)-(4); and PARA 481.

4 Charities Act 1993 s 91(3).

5 Charities Act 1993 s 91(4) (as amended: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/551. Enforcement of Charity Commission orders.

551. Enforcement of Charity Commission orders.

A person guilty of disobedience to orders of the Charity Commission calling for information or documents¹, or in connection with the dissolution of an incorporated body², or relating to a person acting as a charity trustee or trustee for a charity while disqualified³, or for the protection of certain Scottish charities⁴, or orders requiring payment or transfer of property or payment to be called for or made⁵, or orders requiring a default to be made good⁶, or orders to take action which the Commission considers to be expedient in the interests of the charity following an inquiry⁷, or others directing the application of property⁸, or orders requiring a disqualified trustee to reimburse a charity⁹ may be dealt with on the application of the Commission to the High Court as for disobedience to an order of the High Court¹⁰.

If a person fails to comply with any requirement imposed by or under the Charities Act 1993, the Commission may by order give him such directions as it considers appropriate for securing that the default is made good¹¹, and disobedience to such an order likewise renders him liable to be dealt with as for disobedience to an order of the High Court¹². These provisions¹³ do not apply, however, to any such requirement imposed by or under the Charities Act 1993 if (1) the requirement is one imposed by an order of the Commission falling within any of the above provisions¹⁴, or is imposed by a direction of the Commission to which those provisions apply¹⁵; or (2) if a person who fails to comply with, or is persistently in default in relation to, the requirement is liable to any criminal penalty¹⁶.

1 Ie under the Charities Act 1993 s 9(1) (see PARA 557) or s 44(2) (see PARA 355).

2 Ie under the Charities Act 1993 s 61: see PARA 262.

3 Ie under the Charities Act 1993 s 73: see PARA 274. As to the meaning of 'charity trustees' see PARA 1 note 10. As to the meaning of 'charity' see PARA 1.

4 Ie under the Charities Act 1993 s 80.

5 Ie under the Charities Act 1993 s 16 or s 18: see PARAS 289, 566-567.

6 See, eg, the Charities Act 1993 s 69(4); and PARA 560.

7 Ie under the Charities Act 1993 s 19A: see PARA 561.

8 Ie under the Charities Act 1993 s 19B: see PARA 565.

9 Ie under the Charities Act 1993 s 73C: see PARA 333.

10 Charities Act 1993 s 88 (amended by the Charities Act 2006 Sch 8 para 167). The application is made to a single judge of the Chancery Division: see CPR Sch 1 RSC Ord 52 r 1(4). As to the enforcement of High Court orders see generally **CIVIL PROCEDURE**.

11 Charities Act 1993 s 87(1) (s 87 amended by the Charities Act 2006 Sch 8 para 166).

12 See the Charities Act 1993 s 88(c) (as amended: see note 10).

13 Ie the Charities Act 1993 s 87(1): see the text and note 11.

14 Ie the Charities Act 1993 s 88: see the text and notes 1-10.

15 Ie under the Charities Act 1993 s 90(2): see PARA 549.

16 Charities Act 1993 s 87(2) (as amended: see note 11).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(i) Constitution and Functions/552. Fees and other amounts payable to Charity Commission.

552. Fees and other amounts payable to Charity Commission.

The Minister¹ may by regulations² require the payment to the Charity Commission of such fees as may be prescribed by the regulations in respect of the discharge by the Commission of such functions under the enactments relating to charities as may be so prescribed, and the inspection of the register of charities³ or of other material kept by it under those enactments, or the furnishing of copies of or extracts from documents⁴ so kept⁵. Such regulations may confer, or provide for the conferring of, exemptions from liability to pay a prescribed fee, or provide for the remission or refunding of a prescribed fee in prescribed circumstances⁶. The Commission may also impose charges of such amounts as it considers reasonable in respect of the supply of any publications produced by it⁷.

1 As to the Minister see PARA 580.

2 Such regulations must be made by statutory instrument: see the Charities Act 1993 s 86(1)(a). At the date at which this volume states the law no such regulations had been made under s 85 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Charity Commissioners' Fees (Copies and Extracts) Regulations 1992, SI 1992/2986, have effect as if made under it.

3 As to the register of charities see PARA 304.

4 As to the meaning of 'document' see PARA 260 note 2.

5 Charities Act 1993 s 85(1) (amended by the Charities Act 2006 Sch 8 para 164; and SI 2006/2951).

6 Charities Act 1993 s 85(2).

7 Charities Act 1993 s 85(4) (amended by the Charities Act 2006 Sch 8 para 164). As to publications issued by the Charity Commission see PARA 542.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/553. Power of Charity Commission to bring proceedings with respect to charities.

(ii) Power to Act for Protection of Charities

553. Power of Charity Commission to bring proceedings with respect to charities.

Except that it cannot present a petition for the winding up of a charitable company¹, the Charity Commission may exercise the same powers with respect to the taking of legal proceedings with reference to charities² or the property or affairs of charities, or the compromise of claims with a view to avoiding or ending such proceedings, as are exercisable by the Attorney General acting ex officio³. The practice and procedure to be followed in relation to any such proceedings are in all respects, and in particular as regards costs, the same as if they were proceedings taken by the Attorney General acting ex officio⁴. No rule of law or practice is to be taken to require the Attorney General to be a party to any such proceedings⁵. Although these powers are exercisable by the Commission of its own motion, they are exercisable only with the agreement of the Attorney General on each occasion⁶.

1 Ie under the Charities Act 1993 s 63(1): see PARA 234.

2 As to the meaning of 'charity' see PARA 1.

3 Charities Act 1993 s 32(1), (2) (s 32 amended by the Charities Act 2006 Sch 8 para 124). As to the role of the Attorney General in legal proceedings see PARAS 583, 590, 598 et seq.

4 Charities Act 1993 s 32(3) (as amended: see note 3).

5 Charities Act 1993 s 32(4).

6 Charities Act 1993 s 32(5) (as amended: see note 3).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/554. Power to institute inquiries.

554. Power to institute inquiries.

The Charity Commission may from time to time institute inquiries with regard to charities¹ or a particular charity or class of charities, either generally or for particular purposes². No such inquiry may extend to any exempt charity³. However, as from a day to be appointed, such an inquiry may extend to an exempt charity where this has been requested by its principal regulator⁴.

For the purposes of any such inquiry the Commission, or a person appointed by it to conduct the inquiry, may direct any person⁵:

- 448 (1) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which he has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to him on any such matter, and to verify any such accounts, statements or answers by statutory declaration⁶;
- 449 (2) to furnish copies of documents⁷ in his custody or under his control which relate to any matter in question at the inquiry, and to verify the same by statutory declaration⁸; and
- 450 (3) also to attend and give evidence or produce any such documents⁹.

Where an inquiry has been held under these provisions, the Commission may either cause the report of the person conducting the inquiry or such other statement of the results of the inquiry as it thinks fit to be printed and published, or publish any such report or statement in some other way which is calculated in its opinion to bring it to the attention of persons who might wish to make representations about the action to be taken¹⁰.

An application for the review of a decision of the Commission to institute an inquiry under these provisions with regard to a particular institution lies to the Tribunal¹¹ at the instance of the Attorney General, the persons who have control or management of the institution and, if a body corporate, the institution itself¹². The Tribunal has the power to direct the Commission to end the inquiry¹³.

An application for the review of a decision of the Commission to institute an inquiry under these provisions with regard to a class of institutions lies to the Tribunal at the instance of the Attorney General, the persons who have control or management of any institution which is a member of the class of institutions and, if a body corporate, any such institution¹⁴. The Tribunal has the power to do any of the following: (a) direct the Commission that the inquiry should not consider a particular institution; (b) direct the Commission to end the inquiry¹⁵.

1 As to the meaning of 'charity' see PARA 1.

2 Charities Act 1993 s 8(1) (s 8 is amended by the Charities Act 2006 Sch 8 para 102). As to determining the matters in respect of which the power conferred by the Charities Act 1993 s 8 may be exercised see s 28(9); and PARA 569.

The Commission may either conduct such an inquiry itself or appoint a person to conduct it and make a report to the Commission: s 8(2) (amended by the Charities Act 2006 Sch 8 para 102). This power and the related powers under the Charities Act 1993 s 69 (see PARA 560) and s 18 (see PARA 561) have been used in a few cases: see *Report of the Charity Commissioners for England and Wales for 1964* (HC Paper (1965-66) no 8) paras 53-61; *Report of the Charity Commissioners for England and Wales for 1970* (HC Paper (1970-71) no 409) paras 50-52; *Report of the Charity Commissioners for England and Wales for 1971* (HC Paper (1971-72) no 269) paras 90-96; *Report of the Charity Commissioners for England and Wales for 1972* (HC Paper (1972-73) no 259) para 80; *Report of the Charity Commissioners for England and Wales for 1979* (HC Paper (1979-80) no 608) paras 24-36; and *Report of the Charity Commissioners for England and Wales for 1980* (HC Paper (1980-81) no 332) para 31.

3 Charities Act 1993 s 8(1). As to exempt charities see PARA 315. For the purposes of any such inquiry evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined: s 8(4). See generally **CIVIL PROCEDURE** vol 11 (2009) PARA 749 et seq.

4 Charities Act 1993 s 8(1) (as amended (see note 2); prospectively amended by the Charities Act 2006 Sch 5 para 2).

5 Charities Act 1993 s 8(3) (as amended: see note 2). As to directions of the Commission generally see s 90; and PARA 549. As to the service of directions see s 91; and PARA 550.

6 Charities Act 1993 s 8(3)(a).

7 As to the meaning of 'document' see PARA 260 note 2.

8 Charities Act 1993 s 8(3)(b).

9 Charities Act 1993 s 8(3)(c). A person may not be required in obedience to a direction under s 8(3)(c) to go more than ten miles from his place of residence unless the expenses of his attendance are paid to him: see s 8(5); and PARA 555.

10 Charities Act 1993 s 8(6) (as amended: see note 2).

11 As to the Tribunal see PARA 573 et seq.

12 Charities Act 1993 s 2A(4)(a), Sch 1C paras 3, 4(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

13 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

14 Charities Act 1993 s 2A(4)(a), Sch 1C paras 3, 4(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

15 Charities Act 1996 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/555. Expenses in relation to inquiries.

555. Expenses in relation to inquiries.

The Charity Commission may pay to any person the necessary expenses of his attendance to give evidence or produce documents for the purpose of an inquiry¹. No person may be required,

in obedience to a direction to attend and give evidence or produce documents², to travel more than ten miles from his residence unless those expenses are paid or tendered to him³.

The council of a county or district, the Common Council of the City of London⁴ and the council of a London borough⁵ may contribute to the expenses of the Commission in connection with inquiries into local charities⁶ in the council's area⁷.

1 Charities Act 1993 s 8(5) (s 8 amended by the Charities Act 2006 Sch 8 para 102). As to inquiries see PARA 554.

2 Ie in obedience to a direction under the Charities Act 1993 s 8(3)(c): see PARA 554.

3 Charities Act 1993 s 8(5) (as amended: see note 1).

4 As to the Common Council of the City of London see **LONDON GOVERNMENT**.

5 As to areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 24 et seq, 37 et seq.

6 As to the meaning of 'local charity' see PARA 187 note 10.

7 Charities Act 1993 s 8(7) (as amended: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/556. Offences in connection with inquiries.

556. Offences in connection with inquiries.

Persons wilfully giving false evidence on oath before an inquiry¹ are guilty of perjury².

Any person who knowingly or recklessly provides the Charity Commission³ with information which is false or misleading in a material particular is guilty of an offence⁴ if the information was provided in purported compliance with a requirement imposed by or under the Charities Act 1993, or in other circumstances in which the person providing the information intended, or could reasonably be expected to have known, that it would be used by the Commission for the purpose of discharging its functions under that Act⁵. Any person who wilfully alters, suppresses, conceals or destroys any document which he is or is liable to be required, by or under the Charities Act 1993, to produce to the Commission is likewise guilty of an offence⁶. No proceedings may be instituted for either of the above offences except by or with the consent of the Director of Public Prosecutions⁷.

Persons who disobey orders calling for information or documents⁸ may be dealt with as for disobedience to an order of the High Court⁹.

1 As to inquiries see PARA 554.

2 See the Perjury Act 1911 s 1; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1021; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 712 et seq.

3 For these purposes, references to the Commission include references to a person conducting an inquiry under the Charities Act 1993 s 8 (see PARA 554): s 11(4) (s 11 amended by the Charities Act 2006 Sch 8 para 105).

4 Any person guilty of an offence under the Charities Act 1993 s 11 is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a term of imprisonment not exceeding two years or to a fine, or both: s 11(3). As to the statutory maximum see PARA 237 note 7. As to offences by bodies corporate see s 95; and PARA 582.

5 Charities Act 1993 s 11(1) (as amended: see note 3).

6 Charities Act 1993 s 11(2) (as amended: see note 3). The offender is liable to the punishment set out in note 4.

7 Charities Act 1993 s 94(1), (2)(b). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

8 le under the Charities Act 1993 s 9(1): see PARA 557.

9 See the Charities Act 1993 s 88; and PARA 551.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/557. Power to call for documents.

557. Power to call for documents.

The Charity Commission may by order¹:

451 (1) require any person to furnish it with any information in his possession which relates to any charity² and is relevant to the discharge of the Commission's functions or of the functions of the official custodian for charities³;

452 (2) require any person who has in his custody or under his control any document⁴ which relates to any charity and is relevant to the discharge of the Commission's functions or of the functions of the official custodian for charities: (a) to furnish it with a copy of, or extract from, the document; or (b) unless the document forms part of the records or other documents of a court or of a public or local authority, to transmit the document itself to the Commission for its inspection⁵.

The Commission may without payment keep any such copies or extracts⁶. Where an original document transmitted to it for inspection relates only to one or more charities and is not held by a person entitled as trustee or otherwise to the custody of it, the Commission may keep it or deliver it to charity trustees⁷ or other persons who are so entitled⁸.

Until a day to be appointed, no person properly having the custody of documents relating only to an exempt charity⁹ may be required to transmit to the Commission any of those documents or to furnish any copy of, or extracts from, any of them¹⁰.

An appeal against a decision of the Commission requiring a person to supply information or a document under these provisions lies to the Tribunal¹¹ at the instance of the Attorney General and any person who is required to supply the information or document¹². The Tribunal has the power to do any of the following: (i) quash the order; (ii) substitute for all or part of the order any other order which could have been made by the Commission¹³.

1 Charities Act 1993 s 9(1) (amended by the Charities Act 2006 Sch 8 para 103). A person guilty of disobedience to an order of the Charity Commission under the Charities Act 1993 s 9(1) may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court: see s 88(a); and PARA 551.

2 As to the meaning of 'charity' see PARA 1.

3 Charities Act 1993 s 9(1)(a) (amended by the Charities Act 2006 Sch 8 para 103). As to the official custodian for charities see PARA 297 et seq.

4 As to the meaning of 'document' see PARA 260 note 2.

- 5 Charities Act 1993 s 9(1)(b) (amended by the Charities Act 2006 Sch 8 para 103). As to the power to inspect records see PARA 558. As to determining the matters in respect of which the power conferred by the Charities Act 1993 s 9 may be exercised see s 28(9); and PARA 569.
- 6 Charities Act 1993 s 9(3) (amended by the Charities Act 2006 Sch 8 para 103).
- 7 As to the meaning of 'charity trustees' see PARA 1 note 10.
- 8 Charities Act 1993 s 9(3) (amended by the Charities Act 2006 Sch 8 para 103).
- 9 As to exempt charities see PARAS 315-317.
- 10 Charities Act 1993 s 9(4) (amended by the Charities Act 2006 s 6(5); and prospectively repealed by the Charities Act 2006 Sch 5 para 3).
- 11 As to the Tribunal see PARA 573 et seq.
- 12 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 13 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/558. Power to inspect records.

558. Power to inspect records.

Any member of staff of the Charity Commission (including the official custodian for charities even if he is not a member of staff of the Commission)¹, if so authorised by it, is entitled without payment to inspect and take copies of or extracts from the records or other documents² of any court, public registry or office of records, for any purpose connected with the discharge of the functions of the Commission or of the official custodian for charities³. These rights, in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it⁴.

- 1 Charities Act 1993 s 9(6) (added by the Charities Act 2006 Sch 8 para 103(1), (5)). As to the official custodian for charities see PARA 297 et seq.
- 2 As to the meaning of 'document' see PARA 260 note 2.
- 3 Charities Act 1993 s 9(2) (amended by the Charities Act 2006 Sch 8 para 103).
- 4 Charities Act 1993 s 9(5).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/559. Power to enter premises and seize documents etc.

559. Power to enter premises and seize documents etc.

A justice of the peace may issue a warrant if satisfied, on information given on oath by a member of the Charity Commission's staff, that there are reasonable grounds for believing that each of the following conditions is satisfied¹:

- 453 (1) that an inquiry has been instituted² by the Commission³;
- 454 (2) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require⁴ to be produced or furnished⁵; and
- 455 (3) that, if the Commission were to make an order requiring the document or information to be so produced or furnished, the order would not be complied with or the document or information would be removed, tampered with, concealed or destroyed⁶.

Such a warrant authorises the member of the Commission's staff who is named in it to do the following:

- 456 (a) to enter and search the premises specified in it⁷;
- 457 (b) to take such other persons with him as the Commission considers are needed to assist him in doing anything that he is authorised to do under the warrant⁸;
- 458 (c) to take possession of any documents which appear to fall within head (2) above, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents⁹;
- 459 (d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within head (2) above, or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information¹⁰;
- 460 (e) to take copies of, or extracts from, any documents or information falling within head (c) or (d) above¹¹;
- 461 (f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found¹²;
- 462 (g) to require any such person to give him such assistance as he may reasonably require for the taking of copies or extracts as mentioned in head (e) above¹³.

Entry and search under such a warrant must be at a reasonable hour and within one month of the date of its issue¹⁴. The member of the Commission's staff who is authorised under such a warrant must, if required to do so, produce the warrant and documentary evidence that he is a member of the Commission's staff for inspection by the occupier of the premises or anyone acting on his behalf¹⁵.

The member of the Commission's staff who is authorised under such a warrant must make a written record of the date and time of his entry on the premises, the number of persons (if any) who accompanied him onto the premises, and the names of any such persons, the period for which he (and any such persons) remained on the premises, what he (and any such persons) did while on the premises, and any document or device of which he took possession while there¹⁶. If required to do so, he must give a copy of the record to the occupier of the premises or someone acting on his behalf¹⁷. Unless it is not reasonably practicable to do so, the member of the Commission's staff who is authorised under such a warrant must comply with these requirements before leaving the premises¹⁸.

Where possession of any document or device is taken under these provisions, the document may be retained for so long as the Commission considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry, or the device may be retained for so long as the Commission considers that it is necessary to retain it for the purposes of that

inquiry, as the case may be¹⁹. Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it must arrange for the document or device to be returned as soon as is reasonably practicable to the person from whose possession it was taken, or to any of the charity trustees of the charity to which it belonged or related²⁰.

A person who intentionally obstructs the exercise of any rights conferred by a warrant under this section is guilty of an offence²¹.

1 Charities Act 1993 s 31A(1) (s 31A added by the Charities Act 2006 s 26).

2 Ie under the Charities Act 1993 s 8: see PARA 554.

3 Charities Act 1993 s 31A(2)(a) (as added: see note 1).

4 Ie under the Charities Act 1993 s 9(1): see PARA 557.

5 Charities Act 1993 s 31A(2)(b) (as added: see note 1).

6 Charities Act 1993 s 31A(2)(c) (as added: see note 1).

7 Charities Act 1993 s 31A(3)(a) (as added: see note 1).

8 Charities Act 1993 s 31A(3)(b) (as added: see note 1).

9 Charities Act 1993 s 31A(3)(c) (as added: see note 1).

10 Charities Act 1993 s 31A(3)(d) (as added: see note 1).

11 Charities Act 1993 s 31A(3)(e) (as added: see note 1).

12 Charities Act 1993 s 31A(3)(f) (as added: see note 1).

13 Charities Act 1993 s 31A(3)(g) (as added: see note 1).

14 Charities Act 1993 s 31A(4) (as added: see note 1).

15 Charities Act 1993 s 31A(5) (as added: see note 1).

16 Charities Act 1993 s 31A(6) (as added: see note 1).

17 Charities Act 1993 s 31A(7) (as added: see note 1).

18 Charities Act 1993 s 31A(8) (as added: see note 1).

19 Charities Act 1993 s 31A(9) (as added: see note 1).

20 Charities Act 1993 s 31A(10) (as added: see note 1).

21 Charities Act 1993 s 31A(11) (as added: see note 1). Such a person is liable on summary conviction to imprisonment for a term not exceeding three months, a fine not exceeding level 5 on the standard scale, or both: see the Charities Act 1993 s 31A(11) (as so added); the Charities Act 2006 Sch 10 para 6. However as from a day to be appointed (ie the day on which the Criminal Justice Act 2003 s 281(5) comes into force) such a person is liable on summary conviction to imprisonment for a term not exceeding 51 weeks: see the Charities Act 1993 s 31A(11) (as so added); the Charities Act 2006 Sch 10 para 6. As to the standard scale see PARA 308.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/560. Investigation and audit of charity accounts.

560. Investigation and audit of charity accounts.

In the case of a charity which is a company¹ the Charity Commission may by order require that the condition and relevant accounts² of the charity for such period as the Commission thinks fit be investigated and audited by an auditor appointed by it³. The Commission must pay the expenses of the audit, including the remuneration of the auditor⁴.

The auditor has a right of access to all books, accounts and documents⁵ relating to the charity which are in the possession or control of the charity trustees⁶ or to which they have access⁷. The auditor is entitled to require from any past or present charity trustee, and from any past or present officer or employee of the charity, such information and explanation as he thinks necessary for the performance of his duties⁸. If a person fails to afford to the auditor any such facilities, the Commission may by order give to that person or to charity trustees for the time being directions as it thinks appropriate for securing that the default is made good⁹.

At the conclusion or during the progress of the audit, the auditor must make such reports to the Commission about the audit or the charity's accounts or affairs as he thinks the case requires, and must send a copy of any such report to the charity trustees¹⁰.

An application for a review of an order of the Commission requiring such an audit¹¹ lies to the Tribunal¹² at the instance of the Attorney General, the directors of the company, the company itself and any other person who is or may be affected by the order¹³. The Tribunal has the power to do any of the following: (1) quash the order and, if appropriate, remit the matter to the Commission; (2) substitute for the order any other order which could have been made by the Commission; (3) add to the order anything which could have been contained in an order made by the Commission¹⁴.

An appeal against an order giving directions for securing a default in respect of the provision of information and explanation to an auditor¹⁵ lies to the Tribunal at the instance of the Attorney General, in the case of directions given to a person, that person, in the case of directions given to charity trustees, those charities and (if a body corporate) the charity of which they are charity trustees, and any other person who is or may be affected by the directions¹⁶. The Tribunal has the power to do any of the following: (a) quash the order; (b) substitute for the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission¹⁷.

1 As to the meaning of 'charity' see PARA 1. As to the meaning of 'company' see PARA 227.

2 'Relevant accounts' means accounts required to be audited under the Companies Act 2006 Pt 16 (see **COMPANIES**): Charities Act 1993 s 69(1A) (added by SI 2008/527; and amended by SI 2008/948).

3 Charities Act 1993 s 69(1) (amended by the Charities Act 2006 Sch 8 para 154; and SI 2008/527). The auditor must be a person eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (see **COMPANIES**): Charities Act 1993 s 69(1) (amended by SI 2008/948). As to the use made of this power see PARA 554 note 2.

4 Charities Act 1993 s 69(3) (amended by the Charities Act 2006 Sch 8 para 154).

5 As to the meaning of 'document' see PARA 260 note 2.

6 As to the meaning of 'charity trustees' see PARA 1 note 10.

7 Charities Act 1993 s 69(2)(a).

8 Charities Act 1993 s 69(2)(b).

9 Charities Act 1993 s 69(4) (amended by the Charities Act 2006 Sch 8 para 154). As to the enforcement of such an order see PARA 554.

10 Charities Act 1993 s 69(2)(c) (amended by the Charities Act 2006 Sch 8 para 154).

11 Ie under the Charities Act 1993 s 69(1): see text and note 3.

- 12 As to the Tribunal see PARA 573 et seq.
- 13 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 14 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 15 le under the Charities Act 1993 s 69(4): see text and note 9.
- 16 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 17 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

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561. Power to protect charities from mismanagement.

Where, at any time after it has instituted an inquiry¹, the Charity Commission is satisfied² that there is or has been any misconduct or mismanagement³ in the administration of the charity⁴ or that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity⁵; it may of its own motion do one or more of the following things, namely⁶:

- 463 (1) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal, whether under these provisions or otherwise⁷;
- 464 (2) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity⁸;
- 465 (3) by order vest any property held by or in trust for the charity in the official custodian for charities, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him⁹;
- 466 (4) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commission¹⁰;
- 467 (5) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commission¹¹;
- 468 (6) by order restrict, notwithstanding anything in the trusts of the charity, the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commission¹²;
- 469 (7) by order appoint an interim manager who must act as receiver and manager in respect of the property and affairs of the charity¹³;
- 470 (8) by order direct the charity trustees, any trustee of the charity, any officer or employee of the charity or, if a body corporate, the charity itself to take any action specified in the order which the Commission considers to be expedient in the interests of the charity¹⁴.

The Commission must, at such intervals as it thinks fit, review any order made by it under these provisions, other than one appointing additional charity trustees¹⁵ or one directing action it considers expedient¹⁶, and if it appears to them that it would be appropriate to discharge the

order in whole or in part, they must so discharge it, whether subject to any savings or other transitional provisions or not¹⁷.

Further, if both heads (1) and (2) above are satisfied, the Commission may of its own motion do either or both of the following things¹⁸:

- 471 (a) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it¹⁹;
- 472 (b) by order establish a scheme for the administration of the charity²⁰.

For these purposes, misconduct or mismanagement extends, notwithstanding anything in the trusts²¹ of the charity, to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is likely to be applied or applicable for the purposes of the charity²².

Where the Commission makes such an order removing a person from his office or employment under the above provisions, and that person is a member of the charity²³, then, if the misconduct or other relevant conduct on the part of the person takes place on or after 18 March 2008²⁴, the Commission may also make an order terminating his membership of the charity and prohibiting him from resuming it without the Commission's consent²⁵.

An appeal against an order of the Commission under heads (1) to (7) or (a) to (b) above lies to the Tribunal²⁶ at the instance of the Attorney General, the charity trustees of the charity, the charity itself (if a body corporate), any person suspended by the order, and any other person who is or may be affected by the order²⁷. The Tribunal has the power to do any of the following: (i) quash the order in whole or in part and, if appropriate, remit the matter to the Commission; (ii) substitute for all or part of the order any other order which could have been made by the Commission; (iii) add to the order anything which could have been made by the Commission²⁸.

An appeal against an order of the Commission under head (8) above lies to the Tribunal at the instance of the Attorney General and any person who is directed by the order to take the specified action²⁹. The Tribunal has the power to quash the order and, if appropriate, remit the matter to the Commission³⁰.

An appeal against a decision of the Commission to discharge, or not to discharge an order³¹ following a review lies to the Tribunal at the instance of the Attorney General, the charity trustees of the charity to which the order relates, the charity itself (if a body corporate), any person suspended by it and any other person who is or may be affected by the order³². The Tribunal has the power to do any of the following: (A) quash the decision and, if appropriate, remit the matter to the Commission; (B) make the discharge of the order subject to savings or transitional provisions; (C) remove any such savings or transitional provisions; (D) discharge the order in whole or in part, whether subject to any savings or other transitional provisions or not³³.

1 le under the Charities Act 1993 s 8: see PARAS 554-555.

2 Charities Act 1993 s 18(1) (amended by the Charities Act 2006 Sch 8 para 111(2)).

3 As to the meaning of 'misconduct or mismanagement' see the text to notes 20-21.

4 Charities Act 1993 s 18(1)(a). As to the meaning of 'charity' see PARA 1. Section 18 does not apply in the case of an exempt charity: s 18(16). However as from a day to be appointed s 18(16) is substituted by the Charities Act 2006 Sch 5 para 6 and the provisions of the Charities Act 1993 s 18(1)-(3) apply in relation to an exempt charity and s 18(4)-(6) apply in relation to such a charity at any time after the Commission has

instituted an inquiry under s 8 with respect to it and the other provisions of s 18 apply accordingly. At the date at which this volume states the law no such day had been appointed. As to exempt charities see PARAS 315-317.

5 Charities Act 1993 s 18(1)(b).

6 Charities Act 1993 s 18(1) (amended by the Charities Act 2006 Sch 8 para 111(2)). A person guilty of disobedience to an order of the Commission under the Charities Act 1993 s 18 requiring a transfer of property or payment to be called for or made, may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court: see s 88; and PARA 551.

The powers of the Commission under s 18 to remove or appoint charity trustees of its own motion includes power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commission could make on the removal or appointment of a charity trustee by it under s 16: s 18(6) (amended by the Charities Act 2006 Sch 8 para 111(6)). As to the meaning of 'charity trustees' see PARA 1 note 10.

7 Charities Act 1993 s 18(1)(i). See *Jones v A-G* [1974] Ch 148, [1973] 3 All ER 518, CA; further proceedings (1976) Times, 10 November. The power of the Commission to make an order under the Charities Act 1993 s 18(1)(i) is not exercisable so as to suspend any person from the exercise of his office or employment for a period of more than 12 months: s 18(11) (amended by the Charities Act 2006 Sch 8 para 111(8)). However, without prejudice to the generality of the Charities Act 1993 s 89(1) (see PARA 549), any such order made in the case of any person may make provision as respects the period of his suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting: s 18(11) (as so amended).

Where the Commission makes such an order suspending a person his office or employment under the above provisions, and that person is a member of the charity, then, if the misconduct or other relevant conduct on the part of the person takes place on or after 18 March 2008 (ie the day on which s 18A came into force), the Commission may also make an order suspending his membership of the charity for the period for which he is suspended from his office or employment: s 18A(1)(a), (2) (s 18A added by the Charities Act 2006 s 19); and Sch 10 para 4.

An appeal against such an order which suspends a person's membership of a charity lies to the Tribunal at the instance of the Attorney General, the person whose membership is affected and any other person who is or may be affected by the order: Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4). The Tribunal has the power to quash the order and, if appropriate, remit the matter to the Commission: Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (as so added).

8 Charities Act 1993 s 18(1)(ii) (amended by the Charities Act 2003 Sch 8 para 111(2)).

9 Charities Act 1993 s 18(1)(iii). As to the official custodian for charities see PARA 297 et seq.

10 Charities Act 1993 s 18(1)(iv) (amended by the Charities Act 2003 Sch 8 para 111(2)). Contravention of an order under the Charities Act 1993 s 18(1)(iv), (v) or (vi) (see the text and notes 11-12) is an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale: s 18(14). As to the standard scale see PARA 308 note 11. However, proceedings for such an offence may only be instituted by or with the consent of the Director of Public Prosecutions: s 94(1), (2)(c). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq. Section 18(14) is not to be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of any such contravention of an order under s 18(1)(iv) or (vi), whether the proceedings in respect of the contravention are brought against him under s 18(14) or not: s 18(15). The amendments made by the Charities Act 1992 s 8(9) to the Charities Act 1960 s 20 (both repealed; now incorporated in the Charities Act 1993 s 18) have no effect for the purposes of any offence alleged to have been committed before 1 November 1992: see the Charities Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/1900, art 3(2). As to offences by bodies corporate see PARA 582.

11 Charities Act 1993 s 18(1)(v) (amended by the Charities Act 2006 Sch 8 para 111(2)). Contravention of such an order is an offence: see the Charities Act 1993 s 18(14); and note 10.

12 Charities Act 1993 s 18(1)(vi) (amended by the Charities Act 2006 Sch 8 para 111(2)). Contravention of such an order is an offence: see the Charities Act 1993 s 18(14); and note 10.

13 Charities Act 1993 s 18(1)(vii) (amended by the Charities Act 2006 Sch 8 para 111(2)). The appointment must be made in accordance with the Charities Act 1993 s 19 (see PARA 562): see s 18(1)(vii) (as so amended).

14 See the Charities Act 1993 s 19A(1), (2) (s 19A added by the Charities Act 2006 s 20). Such an order may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property, but may

not require any action to be taken which is prohibited by any Act of Parliament or expressly prohibited by the trusts of the charity or is inconsistent with its purposes: Charities Act 1993 s 19A(3) (as so added). Anything done by a person or body under the authority of an order under s 19A is deemed to be properly done in the exercise of these powers but this does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order: s 19A(4), (5) (as so added).

Section 19A applies whether the inquiry under s 8 was instigated before, on or after the day on which the Charities Act 2006 s 20 came into force: see Sch 10 para 5.

- 15 le under the Charities Act 1993 s 18(1)(ii): see the text and note 8.
- 16 le under the Charities Act 1993 s 19A(1), (2): see the text and note 15.
- 17 Charities Act 1993 s 18(13) (amended by the Charities Act 2006 Sch 8 para 111(10)).
- 18 Charities Act 1993 s 18(2) (amended by the Charities Act 2006 Sch 8 para 111(3)).
- 19 Charities Act 1993 s 18(2)(i). See *Scargill v Charity Comrs* (4 September 1998, unreported), Ch D, noted in (1998) 12 TLI 254.
- 20 Charities Act 1993 s 18(2)(ii).
- 21 As to the meaning of 'trusts' see PARA 217 note 5.
- 22 Charities Act 1993 s 18(3).
- 23 Charities Act 1993 s 18A(1)(b) (as added: see note 7).
- 24 le the day on which the Charities Act 1993 s 18A came into force: Charities Act 2006 Sch 10 para 4.
- 25 Charities Act 1993 s 18A(3) (as added: see note 7). If an application for the Commission's consent under s 18A(3)(b) is made five years or more after the order was made, the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused: s 18A(4) (as so added).
- 26 As to the Tribunal see PARA 573 et seq.
- 27 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 28 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 29 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 30 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 31 le under the Charities Act 1993 s 18(13): see text and note 15.
- 32 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 33 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/562. Power to appoint interim manager for a charity.

562. Power to appoint interim manager for a charity.

The Charity Commission may appoint¹ to be interim manager in respect of the property and affairs of a charity² such person, other than a member of its staff, as it thinks fit³. The order appointing him may make provision with respect to the functions to be discharged by the interim manager appointed by the order, and those functions are to be discharged by him

under the supervision of the Commission⁴. In connection with the discharge of those functions any such order may provide for the interim manager appointed by the order to have such powers and duties of the charity trustees⁵ of the charity concerned, whether arising under the Charities Act 1993 or otherwise, as are specified in the order, and for such powers or duties to be performed by the interim manager to the exclusion of the charity trustees⁶. The Commission has the same power to advise an interim manager as it has to advise charity trustees⁷, and it may apply to the High Court for directions in relation to any particular matter arising in connection with the functions of the interim manager⁸. The High Court may on such an application give such directions, or make such orders declaring the rights of any persons, whether before the court or not, as it thinks just, and the costs of any such application must be paid by the charity concerned⁹.

Regulations made by the Minister¹⁰ may make provision with respect to the appointment and removal of persons appointed in accordance with these provisions, the remuneration of such persons out of the income of the charities concerned and the making of reports to the Commission by such persons¹¹. Such regulations may, in particular, authorise the Commission to require security for the due discharge of his functions to be given by a person so appointed, to determine the amount of such a person's remuneration and to disallow any amount of remuneration in such circumstances as are prescribed by the regulations¹².

1 le under the Charities Act 1993 s 18(1)(vii): see PARA 561.

2 As to the meaning of 'charity' see PARA 1.

3 Charities Act 1993 s 19(1) (substituted by the Charities Act 2006 Sch 8 para 112).

4 Charities Act 1993 s 19(2) (amended by the Charities Act 2006 Sch 8 para 112). This provision is expressed to be subject to the Charities Act 1993 s 89(1) (inclusion of incidental or supplemental provisions in the Commission's orders) (see PARA 549): see s 19(2).

5 As to the meaning of 'charity trustees' see PARA 1 note 10.

6 Charities Act 1993 s 19(3) (amended by the Charities Act 2006 Sch 8 para 112).

7 le under the Charities Act 1993 s 29: see PARAS 387-388.

8 Charities Act 1993 s 19(4) (amended by the Charities Act 2006 Sch 8 para 112).

9 Charities Act 1993 s 19(5).

10 As to the Minister see PARA 580.

11 Charities Act 1993 s 19(6) (amended by the Charities Act 2006 Sch 8 para 112; and SI 2006/2951). At the date at which this volume states the law no such regulations had been made under the Charities Act 1993 s 19, but by virtue of the Interpretation Act 1978 s 17(2)(b), the Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, have effect as if made under it: see PARAS 563-564. As to the making of regulations generally see the Charities Act 1993 s 86; and PARA 584.

12 Charities Act 1993 s 19(7) (amended by the Charities Act 2006 Sch 8 para 112); and see PARAS 563-564.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/563. Appointment, remuneration and removal of the interim manager.

563. Appointment, remuneration and removal of the interim manager.

The Charity Commission¹ is authorised to require the person appointed by order to be receiver and manager in respect of the property and affairs of the charity (the 'appointed person')² to

give security to it for the due discharge of his functions within such time and in such form as it may specify³. It is also authorised to determine the amount of an appointed person's remuneration⁴, which is payable out of the income of the relevant charity⁵.

Where it appears to the Commission that an appointed person has failed: (1) to give security within such time or in such form as it has specified⁶; or (2) satisfactorily to discharge any function imposed on him by or by virtue of the relevant order⁷ or in relation to the report made by him to the Commission⁸, and it wishes to consider exercising its powers to disallow any amount of remuneration⁹ or remove the appointed person¹⁰, it must give him, whether in person or by post, a written notice complying with the following requirements¹¹. Such a notice must inform him of:

- 473 (a) any such failure in respect of which the notice is issued¹²;
- 474 (b) the Commission's power to authorise the disallowance of any amount of remuneration if satisfied as to any such failure¹³;
- 475 (c) its power to remove him if satisfied as to any such failure¹⁴; and
- 476 (d) his right to make representations to it in respect of any such alleged failure within such reasonable time as is specified in the notice¹⁵.

The Commission is authorised to disallow any amount of remuneration of an appointed person where, on the expiry of the time specified in the notice¹⁶ for making representations and after consideration of such representations, if any, as are duly made in response to such a notice, it is satisfied that he has failed to give security or satisfactorily discharge any of his functions in such manner as is set out in the notice¹⁷. In addition, on the expiry of the time specified in the notice and after consideration of such representations, if any, as are duly made in response to such a notice, the Commission may remove an appointed person where it is satisfied that he has failed in such manner as is specified in the notice, whether or not it also exercises its power to disallow any amount of remuneration¹⁸.

1 The Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, make the provisions detailed in this paragraph with reference to the Charity Commissioners; by virtue of the Charities Act 2006 s 6(5) this takes effect as a reference to the Charity Commission: see PARA 538. As to the Charity Commissioners see PARA 538.

2 I.e. the interim manager appointed by order under the Charities Act 1993 s 18(1)(vii) (see PARA 561) to be receiver and manager in respect of the property and affairs of a charity: Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 1(2); Interpretation Act 1978 s 17(2)(b).

3 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 2.

4 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 3(1).

5 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 3(2). 'Relevant charity' means the charity in respect of which that person was appointed: reg 1(2).

6 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(1)(a).

7 'Relevant order' means the order by which that person was appointed: Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 1(2).

8 I.e. a report made under the Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5: see PARA 564.

9 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(1)(b). The text refers to the Commission's powers under reg 3(3): see the text and note 17.

10 I.e. its powers under the Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(3): see the text to note 18.

11 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(1).

- 12 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(2)(a).
- 13 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(2)(b). The text refers to the Commission's power under reg 3(3): see the text and note 17.
- 14 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(2)(c). The text refers to the Commission's power under reg 4(3): see the text to note 18.
- 15 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(2)(d).
- 16 Is the notice referred to in the Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(2): see the text and notes 12-15.
- 17 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 3(3). The text refers to the appointed person having failed in such manner as is set out in reg 4(1)(a) or (b): see the text to notes 6, 9.
- 18 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 4(3).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/564. Reports by the appointed interim manager.

564. Reports by the appointed interim manager.

Reports which are to be made to the Charity Commission¹ by the person appointed to be interim manager², in addition to the matters which are required to be included set out below, may also include particulars of any matter which, in the opinion of the appointed person, should be brought to the Charity Commission's attention³. An appointed person must make a report to the Charity Commission not later than three months after the date of his appointment setting out⁴:

- 477 (1) an estimate by him of the total value of the property of the relevant charity⁵ on, or shortly after, the date of his appointment⁶;
- 478 (2) such information about the property and affairs of the relevant charity immediately prior to his appointment as he believes should be included in the report, notwithstanding that it may also be eventually included in another report⁷;
- 479 (3) his strategy for discharging the functions conferred on him by or by virtue of the relevant order⁸.

For as long as an appointed person holds office as such, he must make a report to the Charity Commission not later than one month after each anniversary of his appointment setting out⁹:

- 480 (a) an estimate by him of the total value of the property of the relevant charity on that anniversary of his appointment in respect of which the report is required to be made¹⁰;
- 481 (b) a summary of the discharge by him of the functions conferred on him by or by virtue of the relevant order during the 12 months ending with that anniversary¹¹; and
- 482 (c) where there are changes to his strategy as last set out in a report¹² those changes¹³.

An appointed person must make a report to the Charity Commission not later than three months after the date when he ceased to hold office as such setting out¹⁴: (i) an estimate by him of the total value of the property of the relevant charity on that date¹⁵; and (ii) a summary of the discharge by him of the functions conferred on him by or by virtue of the relevant order

during the period ending with that date and beginning with either the date of his appointment, or if that date is more than 12 months before the date when he ceased to hold office as an appointed person, the day immediately after the last anniversary of his appointment¹⁶.

1 The Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, make the provisions detailed in this paragraph with reference to the Charity Commissioners; by virtue of the Charities Act 2006 s 6(5) this takes effect as a reference to the Charity Commission: see PARA 538 note 1. As to the Charity Commissioners see PARA 538.

2 See PARA 563 note 2.

3 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(1).

4 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(2).

5 As to the meaning of 'relevant charity' see PARA 563 note 5.

6 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(2)(a).

7 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(2)(b). The text refers to a report which may be made under the Charities Act 1993 s 8 (see PARAS 554-555): Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(2)(b); Interpretation Act 1978 s 17(2)(b).

8 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(2)(c). As to the meaning of 'relevant order' see PARA 563 note 7.

9 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(3).

10 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(3)(a).

11 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(3)(b).

12 He changes to his strategy as last set out in a report in accordance with the Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(2)(c) (see head (3) in the text) or reg 5(3)(c) (see head (c) in the text): see reg 5(3)(c).

13 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(3)(c).

14 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(4), which is expressed to be subject to reg 5(5): see note 16.

15 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(4)(a). See note 16.

16 Charities (Receiver and Manager) Regulations 1992, SI 1992/2355, reg 5(4)(b). Regulation 5(4) does not apply where an appointed person ceased to hold office one month or less after an anniversary of his appointment and a report had been made to the Charity Commission in accordance with heads (a)-(c) in the text in respect of that anniversary: reg 5(5).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/565. Power to direct application of trust property.

565. Power to direct application of trust property.

Where the Charity Commission is satisfied that a person, or persons, in possession or control of any property held by or on trust for a charity is, or are, unwilling to apply it properly for the purposes of the charity and that it is necessary or desirable for the purpose of securing a proper application of that property for the purposes of the charity¹, it may by order direct the person or persons concerned to apply the property in such manner as is specified in the order². Such an order may require action to be taken whether or not it would otherwise be within the

powers exercisable by the person or persons concerned in relation to the property³, but may not require any action to be taken which is prohibited by any Act of Parliament or expressly prohibited by the trusts of the charity⁴.

An appeal against such an order lies to the Tribunal⁵ at the instance of the Attorney General and any person who is directed by the order to apply the property in the specified manner⁶. The Tribunal has the power to quash the order and, if appropriate, remit the matter to the Commission⁷.

1 Charities Act 1993 s 19B(1) (s 19B added by the Charities Act 2006 s 21).

2 Charities Act 1993 s 19B(2) (as added: see note 1).

3 Anything done by a person under the authority of such an order must be deemed to be properly done in the exercise of these powers: Charities Act 1993 s 19B(4) (as added: see note 1). This does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order: s 19B(5) (as so added).

4 Charities Act 1993 s 19B(3) (as added: see note 1).

5 As to the Tribunal see PARA 573 et seq.

6 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

7 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/566. Power to remove and appoint charity trustees.

566. Power to remove and appoint charity trustees.

The Charity Commission has power to remove a charity trustee¹ by order made of its own motion²:

483 (1) where, within the last five years, the trustee³:

4

4. (a) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged⁴; or

5. (b) having previously made a composition or arrangement with, or granted a trust deed for, his creditors, has been discharged in respect of it⁵;

5

484 (2) where the trustee is a corporation in liquidation⁶;

485 (3) where the trustee is incapable of acting by reason of mental disorder within the meaning of the Mental Health Act 1983⁷;

486 (4) where the trustee has not acted and will not declare his willingness or unwillingness to act⁸; or

487 (5) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity⁹.

The Commission may by order made of its own motion appoint a person to be a charity trustee of a charity¹⁰:

- 488 (i) in place of a charity trustee removed by the Commission under these provisions or otherwise¹¹;
- 489 (ii) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment¹²;
- 490 (iii) where there is a single charity trustee, not being a corporation aggregate, and the Commission is of opinion that it is necessary for the proper administration of the charity to increase the number¹³; or
- 491 (iv) where the Commission is of opinion that it is necessary for the proper administration of the charity to have an additional trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside England and Wales¹⁴.

An order for the appointment or removal of a charity trustee or trustee for a charity, or for the vesting or transfer of property under these powers, has the same effect as a similar order¹⁵ made on the application of the charity or of other persons¹⁶.

An appeal against an order of the Commission removing a charity trustee¹⁷ lies to the Tribunal¹⁸ at the instance of the Attorney General, the charity trustee, the remaining charity trustees of the charity of which he was a charity trustee, the charity itself (if a body corporate) and any other person who is or may be affected by the order¹⁹. An appeal against an order of the Commission appointing a charity trustee²⁰ lies to the Tribunal at the instance of the Attorney General, the other charity trustees of the charity, the charity itself (if a body corporate) and any other person who is or may be affected by the order²¹.

In either case, the Tribunal has the power to do any of the following: (A) quash the order in whole or in part and, if appropriate, remit the matter to the Commission; (B) substitute for all or part of the order any other order which could have been made by the Commission; (C) add to the order anything which could have been contained in an order made by the Commission²².

1 As to the meaning of 'charity trustees' see PARA 1 note 10. Until a day to be appointed, the Charities Act 1993 s 18 does not apply in the case of an exempt charity: s 18(16). However as from a day to be appointed s 18 is substituted by the Charities Act 2006 Sch 5 para 6 and the provisions of s 18(1)-(3) apply in relation to an exempt charity and s 18(4)-(6) apply in relation to such a charity at any time after the Commission has instituted an inquiry under s 8 (see PARA 551) with regard to it. At the date at which this volume states the law no such day had been appointed. As to exempt charities see PARAS 315-317.

2 Charities Act 1993 s 18(4) (amended by the Charities Act 2006 Sch 8 para 111(4)). The powers of the Commission under the Charities Act 1993 s 18 to remove or appoint charity trustees of its own motion includes power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commission could make on the removal or appointment of a charity trustee by it under s 16 (see PARAS 187, 189-190, 295): s 18(6) (as so amended) The vesting or transfer of any property in accordance with such an order does not operate as a breach of any covenant or condition against alienation or give rise to a forfeiture: see PARA 187 note 6.

3 Charities Act 1993 s 18(4)(a).

4 Charities Act 1993 s 18(4)(a)(i). See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

5 Charities Act 1993 s 18(4)(a)(ii). See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

6 Charities Act 1993 s 18(4)(b). See **COMPANIES**.

7 Charities Act 1993 s 18(4)(c). As to mental disorders within the meaning of the Mental Health Act 1983 see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402.

8 Charities Act 1993 s 18(4)(d).

9 Charities Act 1993 s 18(4)(e).

- 10 Charities Act 1993 s 18(5) (amended by the Charities Act 2006 Sch 8 para 111(5)).
- 11 Charities Act 1993 s 18(5)(a) (amended by the Charities Act 2006 Sch 8 para 111(5)).
- 12 Charities Act 1993 s 18(5)(b).
- 13 Charities Act 1993 s 18(5)(c) (amended by the Charities Act 2006 Sch 8 para 111(5)).
- 14 Charities Act 1993 s 18(5)(d) (amended by the Charities Act 2006 Sch 8 para 111(5)).
- 15 *Ie* under the Charities Act 1993 s 16: see *PARAS* 187, 189-190, 295.
- 16 Charities Act 1993 s 18(7). See also note 2.
- 17 *Ie* under the Charities Act 1993 s 18(4): see notes 3-9.
- 18 As to the Tribunal see *PARA* 573 *et seq.*
- 19 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 20 *Ie* under the Charities Act 1993 s 18(5): see notes 10-14.
- 21 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).
- 22 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/567. Notice of orders.

567. Notice of orders.

Before exercising any of the powers relating to the protection of charities¹, other than the emergency powers², the Charity Commission must give notice³ to each of the charity trustees⁴ of its intention to do so⁵. It must also normally give public notice of its intention to make orders appointing, discharging or removing a charity trustee or trustee for a charity⁶.

Before making an order removing a charity trustee or trustee for a charity or officer, employee or agent of a charity, without his consent, the Commission must give him not less than one month's notice of its proposal inviting representations to be made to it within a time specified in the notice, save where he cannot be found or has no known address in the United Kingdom⁷.

1 *Ie* the jurisdiction under the Charities Act 1993 s 18: see *PARAS* 561, 566.

2 *Ie* under the Charities Act 1993 s 18(1): see *PARA* 561.

3 Notice may be given by post and, if so, may be addressed to the recipient's last known address in the United Kingdom: Charities Act 1993 s 18(12). As to the meaning of 'United Kingdom' see *PARA* 187 note 17.

4 However, notice need not be given to any that cannot be found or has no known address in the United Kingdom: Charities Act 1993 s 18(12). As to the meaning of 'charity trustees' see *PARA* 1 note 10.

5 Charities Act 1993 s 18(12) (amended by the Charities Act 2006 s 75(1), Sch 8 para 111(9)).

6 See the Charities Act 1993 s 20A(1), (2); and *PARA* 289.

7 Charities Act 1993 s 20A(5) (added by the Charities Act 2006 s 22). As to the contents of the notice see the Charities Act 1993 s 20A(7); and *PARA* 289.

The Commission must take into account any representations made to it within the period specified in the notice, and may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable: see s 20A(6); and PARA 289.

Notice (other than public notice) may be given by post and, if given by post, be addressed to the recipient's last known address in the United Kingdom: see s 20A(8) (as so added); and PARA 289.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(ii) Power to Act for Protection of Charities/568. Copy of orders and Commission's reasons to be sent to charity.

568. Copy of orders and Commission's reasons to be sent to charity.

Where the Commission makes an order for the protection of charities¹, it must send a copy of the order and a statement of its reasons for making it to the charity concerned, if a body corporate, or else to each of the charity trustees.² These documents must be sent to the charity or charity trustees as soon as practicable after the making of the order³. However, the Commission need not send the documents or, as the case may be, the statement of reasons at this time if it considers that to do so would prejudice any inquiry or investigation or would not be in the interests of the charity, in which case once the Commission considers that this is no longer the case, it must send the documents or, as the case may be, the statement to the charity or charity trustees as soon as practicable⁴.

1 le under the Charities Act 1993 s 18, 18A, 19A or 19B: see PARA 565.

2 Charities Act 1993 s 19C(1), (2) (s 19C added by the Charities Act 2006 Sch 8 para 113). Nothing in s 19C requires any document to be sent to a person who cannot be found or who has no known address in the United Kingdom: Charities Act 1993 s 19C(5) (as so added). Any documents required to be sent to a person under this section may be sent to, or otherwise served on, that person in the same way as an order made by the Commission under this Act could be served on him in accordance with s 91 (see PARA 550): s 19C(6) (as so added).

3 Charities Act 1993 s 19C(3) (as added: see note 2).

4 Charities Act 1993 s 19C(4) (as added: see note 2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(iii) Miscellaneous Statutory Powers/569. Dormant bank accounts of charities.

(iii) Miscellaneous Statutory Powers

569. Dormant bank accounts of charities.

Where the Charity Commission¹: (1) is informed by a relevant institution² that it holds one or more accounts in the name or on behalf of a particular charity (the 'relevant charity')³, and that the account or, if it holds two or more accounts, each of the accounts is dormant⁴; and (2) the Commission is unable, after making reasonable inquiries, to locate that charity or any of its trustees⁵, it may give a direction⁶ which:

- 492 (a) requires the institution concerned to transfer the amount⁷, or, as the case may be, the aggregate amount, standing to the credit of the relevant charity in the

account or accounts in question to such other charity as is specified⁸ in the direction⁹; or

- 493 (b) requires the institution concerned to transfer such part of that amount or aggregate amount as is specified to each of two or more other specified charities¹⁰.

In such a direction the Commission may specify such other charity or charities as it considers appropriate, having regard, in a case where the purposes of the relevant charity are known to it, to those purposes and to the purposes of the other charity or charities¹¹. Any amount received by a charity under these provisions is received on the terms that it will be held and applied by the charity for the purposes of the charity, but will, as property of the charity, nevertheless be subject to any restrictions on expenditure to which it was subject as property of the relevant charity¹².

Where the Commission has been informed by any relevant institution under head (1) above, and before any transfer is made by the institution in pursuance of a direction, the institution has, by reason of any circumstances, cause to believe that the account, or, as the case may be, any of the accounts is or are no longer dormant, it must forthwith notify those circumstances in writing to the Commission¹³. If it appears to the Commission that the account or accounts in question is or are no longer dormant, it must revoke the direction which has previously been given by it to the institution with respect to the relevant charity¹⁴. No obligation as to secrecy or other restriction precludes a relevant institution from disclosing any information to the Commission for the purpose of enabling it to discharge the above functions¹⁵.

An appeal against such a direction of the Commission lies to the Tribunal¹⁶ at the instance of the Attorney General, the charity trustees of the charity, the charity itself (if a body corporate) and any other person who is or may be affected by the order¹⁷. The Tribunal has the power to do any of the following: (i) quash the direction and, if appropriate, remit the matter to the Commission; (ii) substitute for all or part of the direction any other direction which could have been made by the Commission; (iii) add to the direction anything which could have been contained in a direction given by the Commission¹⁸.

1 Charities Act 1993 s 28(1) (amended by the Charities Act 2006 Sch 8 para 121).

2 Charities Act 1993 s 28(1)(a) (amended by the Charities Act 2006 Sch 8 para 121). A 'relevant institution' means: (1) the Bank of England; (2) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 to accept deposits; (3) an EEA firm of the kind mentioned in Sch 3 para 5(6) which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12(1)) to accept deposits; or (4) such other person who may lawfully accept deposits in the United Kingdom as may be prescribed by the Minister: Charities Act 1993 s 28(8)(b) (amended by the Charities Act 2006 Sch 8 para 121; SI 2001/3649; SI 2006/2951). Heads (2)-(4) must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22 and Sch 2: Charities Act 1993 s 28(8A) (added by SI 2001/3649). See also **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 791. As to the Minister see PARA 580.

3 Charities Act 1993 s 28(1)(a)(i). As to the meaning of 'charity' see PARA 1. Until a day to be appointed s 28(1) does not apply to any account held in the name of or on behalf of an exempt charity: s 28(10) (prospectively repealed by the Charities Act 2006 Sch 5 para 7, Sch 9).

4 Charities Act 1993 s 28(1)(a)(ii). An account is dormant if no transaction other than: (1) a transaction consisting in a payment into the account; or (2) a transaction which the institution holding the account has itself caused to be effected, has been effected in relation to the account within the period of five years immediately preceding the date when the Commission was so informed under s 28(1)(a): s 28(8)(a) (amended by the Charities Act 2006 Sch 8 para 121).

5 Charities Act 1993 s 28(1)(b) (amended by the Charities Act 2006 Sch 8 para 121).

6 Charities Act 1993 s 28(1) (amended by the Charities Act 2006 Sch 8 para 121). For the purpose of determining the matters in respect of which any of the powers conferred by the Charities Act 1993 s 8 or s 9 (see PARA 554 et seq) may be exercised, it is to be assumed that the Commission has no functions under s 28 in relation to accounts to which this provision applies, with the result that, for example, a relevant institution is not, in connection with the functions of the Commission under s 28, required under s 8(3)(a) to furnish any

statements, or answer any questions or inquiries, with respect to any such accounts held by the institution: s 28(9) (amended by the Charities Act 1993 Sch 8 para 121). The Charities Act 1993 s 28(9) applies to accounts which are dormant accounts by virtue of s 28(8)(a) (see note 3) but would not be such accounts if s 28(8)(a)(i) (see note 3) were omitted: s 28(9).

7 Reference to the transfer of any amount to a charity are references to its transfer to the charity trustees, or to any trustee for the charity, as the charity trustees may determine, and any reference to any amount received by the charity is to be construed accordingly: Charities Act 1993 s 28(8)(c). As to the meaning of 'charity trustees' see PARA 1 note 10.

8 In accordance with the Charities Act 1993 s 28(3): see the text and note 11.

9 Charities Act 1993 s 28(2)(a).

10 Charities Act 1993 s 28(2)(b).

11 Charities Act 1993 s 28(3) (amended by the Charities Act 1993 Sch 8 para 121). The Commission, however, must not specify any charity unless it have received from the charity trustees written confirmation that those trustees are willing to accept the amount proposed to be transferred to the charity: Charities Act 1993 s 28(3) (as so amended).

12 Charities Act 1993 s 28(4). The receipt of any charity trustees or trustees for a charity in respect of any amount received from a relevant institution under these provisions is a complete discharge of the institution in respect of that amount: s 28(6).

13 Charities Act 1993 s 28(5) (amended by the Charities Act 2006 Sch 8 para 121).

14 Charities Act 1993 s 28(5) (amended by the Charities Act 2006 Sch 8 para 121).

15 Charities Act 1993 s 28(7) (amended by the Charities Act 2006 Sch 8 para 121).

16 As to the Tribunal see PARA 573 et seq.

17 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

18 Charities Act 1993 s 2A(4)(a), Sch 1C Table Col 3 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(iii) Miscellaneous Statutory Powers/570. Power to determine membership of charity.

570. Power to determine membership of charity.

The Charity Commission may on the application of a charity, or at any time after the institution of an inquiry, determine who are the members of the charity¹. This power may also be exercised by a person appointed by the Commission for the purpose² and the Commission may, if it thinks fit, so appoint the person appointed to conduct the inquiry³.

1 Charities Act 1993 s 29A(1) (s 29 added by the Charities Act 2006 s 25).

2 Charities Act 1993 s 29A(2) (as added: see note 1).

3 Charities Act 1993 s 29A(3) (as added: see note 1).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(iii) Miscellaneous Statutory Powers/571. Miscellaneous powers.

571. Miscellaneous powers.

Apart from its powers under the Charities Acts 1993 and 2006, the Charity Commission has specific powers and functions under a variety of other Acts: the Bishops Trusts Substitution Act 1858¹, the Voluntary Hospitals (Paying Patients) Act 1936², the Reserve Forces Act 1980³, the Pastoral Measure 1983⁴ and the Redundant Churches and Other Religious Buildings Act 1969⁵.

The Commission also has the power, on application by any person interested, to make such provision for the apportionment and management of endowments held partly for ecclesiastical purposes and partly for other purposes as seems to it necessary or expedient for giving effect to the Local Government Act 1894⁶.

The Commission's office is a place of deposit for those of its records selected for permanent preservation⁷.

1 See PARA 267.

2 See PARA 572.

3 See PARA 196.

4 See PARA 194.

5 See PARA 195.

6 See the Local Government Act 1894 s 75(2); PARA 264 note 4; and **LOCAL GOVERNMENT** vol 69 (2009) para 537.

7 le by virtue of an appointment by the Lord Chancellor under the Public Records Act 1958 s 4(1) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 838): see the *Report of the Charity Commissioners for England and Wales for 1961* (HC Paper (1962-63) no 30) para 43; and the Charities Act 2006 s 6(5).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(4) THE CHARITY COMMISSION/(iii) Miscellaneous Statutory Powers/572. Paying patients in voluntary hospitals.

572. Paying patients in voluntary hospitals.

On the application of the committee of management of a voluntary hospital¹, the Charity Commission may, by order, authorise the provision of specified facilities for the accommodation and treatment of patients able and willing to pay for it by the committee for specified periods². The committee may charge for accommodation and maintenance, including medical and surgical attendance and treatment given by the resident staff, in accordance with the scale specified in the Commission's order³, which may include any consequential or incidental provisions appearing to the Commission to be necessary or desirable⁴. The order may authorise the committee to defray out of any fund applicable to the general purposes of the hospital the difference between the full expense of accommodation and maintenance and the sum charged to a paying patient⁵, but except to this extent no order may be construed as authorising any application of funds⁶.

On the application of the committee, the Commission may from time to time vary an order, and may of its own motion vary or revoke an order if it considers that there has been a material change in the circumstances and it first gives the committee and others concerned an opportunity of making representations⁷.

Generally the Commission must not make an order authorising any use or application of property or funds which, apart from the order, would involve a breach of any trusts upon which the property or funds are held, or a contravention of any prohibition or restriction expressly relating to the hospital⁸. But it may make such an order:

- 494 (1) in the case of an application to use land, if it is satisfied that, if the order were not made, the land would not come into use for the purposes for which the trusts were created or the prohibition or restriction was imposed until after the expiration of a substantial period from the date of the application⁹;
- 495 (2) in the case of an application to use existing buildings or part of such buildings, if satisfied either¹⁰:
- 6
6. (a) that such use for the purposes for which the trusts were created or the prohibition or restriction was imposed is impracticable, or is likely soon so to become, because the committee of management have not at their disposal, and will be unable to obtain, sufficient funds to enable the buildings or part to be, or to continue to be, so used¹¹; or
7. (b) that use for those purposes is impracticable, or is likely soon so to become, because of a shortage of demand for accommodation on the part of the persons for whose benefit the trusts were created or the prohibition or restriction was imposed¹²; or
8. (c) that the committee has, or is likely soon to have, at its disposal premises which could be put to the use to which the application relates without breach of any trust upon which those premises are held or contravention of any such prohibition or restriction, and that the buildings or part will be used by way of exchange for those premises¹³;
- 7
- 496 (3) in any case, if satisfied that the authorisation will not diminish or restrict the accommodation for such persons for whose benefit the trusts were created or the prohibition or restriction imposed which is provided in the hospital at the date of the application and which the committee would be able to continue to provide if the order were not made¹⁴.

1 'Committee of management' includes any body or persons having the management or control of a voluntary hospital: Voluntary Hospitals (Paying Patients) Act 1936 s 1. 'Voluntary hospital' means an institution, not being an institution carried on for profit or which is maintained wholly or mainly at the expense of the rates or which is vested in an NHS trust, an NHS foundation trust or a primary care trust or which is vested in the Secretary of State, which provides medical or surgical treatment for in-patients: s 1 (definition amended by the National Health Service Act 1946 s 76, Sch 10 Pt I (repealed with savings by the National Health Service Act 1977 s 129, Sch 14 paras 1-3, 13, Sch 16); the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 2; SI 2000/90; and the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 para 2). The functions of the Secretary of State under the Voluntary Hospitals (Paying Patients) Act 1936 are exercised, in relation to England, by the Secretary of State for Health, and in relation to Wales, by the Secretary of State for Wales: see the Secretary of State for Social Services Order 1968, SI 1968/1699; Transfer of Functions (Wales) Order 1969, SI 1969/388; Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843.

'NHS trust' means a National Health Service trust established under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 (see **HEALTH SERVICES** vol 54 (2008) PARA 83): Voluntary Hospitals (Paying Patients) Act 1936 s 1 (definition added by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 2(b); and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 2(a)).

'Primary care trust' means a primary care trust established under the National Health Service Act 2006 s 18 (see **HEALTH SERVICES**): Voluntary Hospitals (Paying Patients) Act 1936 s 1 (definition added by SI 2000/90; and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 2(b)).

2 See the Voluntary Hospitals (Paying Patients) Act 1936 s 2(1) (s 2 amended by the Charities Act 2006 Sch 8 para 23). As to the power of the Charity Commission to make rules for these purposes see s 5 (s 5 amended by the Charities Act 2006 Sch 8 para 26). As to the rules relating to applications see the Rules made by the

Charity Commissioners under section 5(1) of the Voluntary Hospitals (Paying Patients) Act 1936, SR & O 1936/1025. The Commission may require a sum to cover their costs and expenses to be provided out of hospital funds: see the Voluntary Hospitals (Paying Patients) Act 1936 s 5(3) (as so amended). The powers conferred on the Charity Commission by the Voluntary Hospitals (Paying Patients) Act 1936 are in addition to and not in derogation of any other powers exercisable by it: s 6(2) (s 6 amended by the Charities Act 2006 Sch 8 para 27).

3 See the Voluntary Hospitals (Paying Patients) Act 1936 s 2(2). Except where satisfied that it would be inappropriate to do so, the Commission must include, in the scale of charges, charges fixed with a view to meeting the needs of patients who, although able to make some payment, are unable to pay sufficient to meet the full expense to the hospital of their accommodation and maintenance: see s 3(1) (amended by the Charities Act 2006 Sch 8 para 24). The Commission must make it a condition that, in the use of a specified number of authorised beds, priority is to be given to such patients: see s 3(1).

4 See the Voluntary Hospitals (Paying Patients) Act 1936 s 2(3) (as amended: see note 2).

5 See the Voluntary Hospitals (Paying Patients) Act 1936 s 3(2).

6 See the Voluntary Hospitals (Paying Patients) Act 1936 s 6(3).

7 See the Voluntary Hospitals (Paying Patients) Act 1936 s 2(4) (as amended: see note 2).

8 See the Voluntary Hospitals (Paying Patients) Act 1936 s 4 (amended by the Charities Act 2006 Sch 8 para 25).

9 See the Voluntary Hospitals (Paying Patients) Act 1936 s 4(a).

10 See the Voluntary Hospitals (Paying Patients) Act 1936 s 4(b) (as amended: see note 8).

11 See the Voluntary Hospitals (Paying Patients) Act 1936 s 4(b)(i).

12 See the Voluntary Hospitals (Paying Patients) Act 1936 s 4(b)(ii).

13 See the Voluntary Hospitals (Paying Patients) Act 1936 s 4(b)(iii).

14 See the Voluntary Hospitals (Paying Patients) Act 1936 s 4(c) (as amended: see note 8).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(5) APPEALS TO THE TRIBUNAL/573. Appeals to the Tribunal.

(5) APPEALS TO THE TRIBUNAL

573. Appeals to the Tribunal.

The Tribunal has jurisdiction¹ to hear and determine appeals against any of the following decisions, directions or orders of the Charity Commission², which are dealt with elsewhere in this title and include:

497 (1) a decision to enter or not enter an institution in the register of charities or to remove an institution from the register³;

498 (2) a decision not to make a determination in relation to particular information contained in the register⁴;

499 (3) a direction requiring the name of a charity to be changed⁵;

500 (4) a decision to institute an inquiry with regard to a particular institution or class of institutions⁶;

501 (5) an order requiring a person to supply information or a document⁷;

502 (6) an order made under its concurrent jurisdiction with the High Court⁸;

503 (7) an order or decision made under its powers to act for the protection of charities⁹;

- 504 (8) an order made in relation to any land vested in the official custodian in trust for a charity and which is subject to the Reverter of Sites Act 1987¹⁰;
- 505 (9) a direction under its power to give directions about dormant bank accounts in relation to an account held in the name of or on behalf of a charity¹¹;
- 506 (10) an order for the taxation of a solicitor's bill¹²;
- 507 (11) a decision not to make certain orders in relation to land or a mortgage of land held by or in trust for a charity¹³;
- 508 (12) an order requiring the accounts of a charity to be audited¹⁴;
- 509 (13) an order giving directions to the charity trustees for the time being of the charity concerned, or to the person who caused the default, for securing that the default of failing to afford to an auditor or independent examiner or examiner any facility to which he was entitled under certain provisions¹⁵ is made good¹⁶;
- 510 (14) a decision to request charity trustees to prepare an annual report for a charity¹⁷;
- 511 (15) a decision to dispense with the annual return requirements in relation to a charity or class of charities¹⁸;
- 512 (16) a decision to grant, or not to grant, a certificate of incorporation to the trustees of a charity, or to amend, or not to amend, such a certificate¹⁹;
- 513 (17) an order which dissolves a charity which is an incorporated body²⁰;
- 514 (18) a decision to give, or withhold, consent for certain matters in relation to a body corporate which is a charity²¹;
- 515 (19) an order requiring that a person affords any facility to which he is entitled under certain provisions²² to an auditor in relation to a charity which is a company and which is being investigated and audited by order of the Commission²³;
- 516 (20) a decision to waive, or not to waive, a person's disqualification as charity trustee or trustee for a charity²⁴;
- 517 (21) an order requiring the repayment of remuneration received by a disqualified charity trustee or trustee for a charity²⁵;
- 518 (22) an order requiring a trustee or connected person to repay, or not to receive, remuneration²⁶;
- 519 (23) a decision to notify charity trustees that it objects to a resolution of the charity trustees in relation to certain transfers of property²⁷;
- 520 (24) a decision not to concur with a resolution of charity trustees to spend capital²⁸;
- 521 (25) a decision to withhold approval for the transfer of property from trustees to a parish council²⁹;
- 522 (26) a decision not to give a direction as to whether certain institutions are to be treated as forming part of a charity or as a distinct charity, or whether two or more charities are to be treated as a single charity, for the purposes of the Charities Act 1993, in relation to an institution or a charity³⁰;
- 523 (27) as from a day to be appointed, a decision to grant, or not to grant, an application for the constitution of a Charitable Incorporated Organisation ('CIO') and its registration as a charity, or for the conversion of a charitable company or a registered society into a CIO and its registration as a charity, or for the amalgamation of two or more CIOs and the incorporation and registration as a charity of a new CIO as their successor³¹;
- 524 (28) as from a day to be appointed, a decision to confirm, or not confirm, a resolution passed by a CIO for the transfer of its undertaking³²;
- 525 (29) as from a day to be appointed, a decision to refuse to register an amendment to the constitution of a CIO³³;
- 526 (30) as from a day to be appointed, a decision to give or withhold consent under provisions of the Companies Act 2006³⁴.

An appeal may be brought by the Attorney General or any person specified for each appeal in the Charities Act 1993³⁵, and the Commission is the respondent to such an appeal³⁶. However, where an order, decision or direction gives effect to a decision of the Tribunal deciding a question referred to the Tribunal by the Commission or the Attorney General, no appeal may be made in respect of that order by a person who was at any stage party to the proceedings in which the question was referred³⁷.

In determining an appeal the Tribunal must consider afresh the decision, direction or order appealed against³⁸, except in relation to an appeal under head (5) above³⁹. In such an appeal, it must consider whether the information or document in question (a) relates to a charity; or (b) is relevant to the discharge of the functions of the Commission or the official custodian⁴⁰ and may allow such an appeal only if either (a) or (b) is satisfied⁴¹.

The Tribunal may take into account evidence which was not available to the Commission⁴².

The Tribunal may dismiss the appeal or, if it allows the appeal, exercise any of the powers as specified for each of the decisions, directions and orders above⁴³. Where this includes the power to remit a matter to the Commission, the power is to remit the matter generally or for determination in accordance with a finding made or direction given by the Tribunal⁴⁴.

1 Until 1 September 2009 this Tribunal was the Charity Tribunal. However the Charity Tribunal was abolished and its functions transferred to the First-tier Tribunal and the Upper Tribunal: see the Transfer of Functions of the Charity Tribunal Order 2009, SI 2009/1834, art 2. As to the Tribunal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. The following offices held before 1 September 2009 are also transferred: (1) the office of the President of the Charity Tribunal appointed under the Charities Act 1993 Sch 1B para 1(2)(a) now holds the office of deputy judge of the Upper Tribunal and transferred-in judge of the First-tier Tribunal; (2) a legal member of the Charity Tribunal appointed under Sch 1B para 1(2)(b) now holds the office of transferred-in judge of the First tier Tribunal; and (3) an ordinary member of the Charity Tribunal appointed under Sch 1B para 1(2)(c) now holds the office of transferred-in other member of the First-tier Tribunal: see the Transfer of Functions of the Charity Tribunal Order 2009, SI 2009/1834, art 3. Appeals, applications and matters referred to the Tribunal under the Charities Act 1993 Sch 1C or Sch 1D must be heard and determined by the Tribunal in accordance with those Schedules, or any such enactment, taken with rules made under s 2B(2) (see PARA 576 and Tribunal Procedure Rules): s 2A(5) (amended by SI 2009/1834).

2 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), Table Col 1 (s 2A, Sch 1C and 1D added by the Charities Act 2006 s 8(1), (3), Sch 4). The Charities Act 1993 Sch 1C para 1 does not apply in the case of a reviewable matter: see Sch 1C para 1(1). As to reviewable matters see PARA 574. The Minister may by order amend or otherwise modify an entry in the Table, add an entry to the Table or remove an entry from the Table: Charities Act 1993 s 2A(4)(a), Sch 1C para 6(1) (as so added). Such an order may make such amendments, repeals or other modifications of Sch 1C(1)-(5) (see notes 34-42 and PARA 574 notes 4, 12-13, 15-16), or of an enactment which applies Sch 1C, as the Minister considers appropriate in consequence of any change in the Table made by the order: s 2A(4)(a), Sch 1C para 6(2) (as so added). At the date at which this title states the law no such order has been made. As to the Charity Commission see PARAS 538-572. As to the Minister see PARA 580. As from a day to be appointed Sch 1C para 6 applies in relation to the Charities Act 2006 s 57 (see PARA 499) the provisions of s 57 were contained within Sch 1C and the reference in Sch 1C para 6 to paras 1-5 included a reference to any other provision relating to appeals to the Tribunal which in contained in Pt 3 Chapter 1 of the Charities Act 2006: Charities Act 1993 Sch 1C para 7 (not yet in force).

3 le under the Charities Act 1993 s 3 or s 3A: see PARA 305.

4 le under the Charities Act 1993 s 3(9): see PARA 305.

5 le under the Charities Act 1993 s 6: see PARA 309.

6 le under the Charities Act 1993 s 8: see PARAS 554-555.

7 le under the Charities Act 1993 s 9: see PARA 557.

8 le under the Charities Act 1993 s 16: see PARAS 187, 189-190, 295. This includes such an order made by virtue of s 23(1): see PARA 300.

9 le under the Charities Act 1993 s 18(1), (2), (4), (5), (13), 18A(2), 19A(2) or 19B(2): see PARAS 561, 565-566.

- 10 le under the Charities Act 1993 s 23(2): see PARA 300.
- 11 le under the Charities Act 1993 s 28: see PARA 569.
- 12 le under the Charities Act 1993 s 31: see PARA 642.
- 13 le under the Charities Act 1993 ss 36, 38: see PARAS 395, 398.
- 14 le under the Charities Act 1993 s 43(3): see PARA 350.
- 15 le entitled by virtue of the Charities Act 1993 s 44(1)(d) or (e) (see PARA 355).
- 16 le under the Charities Act 1993 s 44(2): see PARA 355.
- 17 le under the Charities Act 1993 s 46(5): see PARA 375.
- 18 le under the Charities Act 1993 s 48(1): see PARA 377.
- 19 le under the Charities Act 1993 ss 50(1), 56(4): see PARAS 260.
- 20 le under the Charities Act 1993 s 61(1) or (2): see PARA 262.
- 21 le under the Charities Act 1993 s 64(2) or s 66(1): see PARAS 238-239.
- 22 le entitled under the Charities Act 1993 s 69(2).
- 23 le under the Charities Act 1993 s 69(4): see PARA 560.
- 24 le under the Charities Act 1993 s 72(4): see PARA 273.
- 25 le under the Charities Act 1993 s 73(4): see PARA 274.
- 26 le under the Charities Act 1993 s 73C(5) or (6): see PARA 333.
- 27 le under the Charities Act 1993 s 74A(2) in relation to a resolution of the charity trustees under s 74(2) or s 74C(2): see PARAS 217-219.
- 28 le under the Charities Act 1993 s 75A in relation to a resolution of charity trustees under s 75A(3) or s 75B(2): see PARAS 222, 223.
- 29 le under the Charities Act 1993 s 79(1): see PARA 263.
- 30 le under the Charities Act 1993 s 96(5) or (6): see PARA 545.
- 31 le under the Charities Act 1993 s 69E, 69H or 69K (not yet in force): see PARAS 243, 245, 248.
- 32 le under the Charities Act 1993 s 69M (not yet in force): see PARA 249.
- 33 le under the Charities Act 1993 Sch 5B para 15 (not yet in force): see PARA 244.
- 34 le under the Companies Act 2006 s 42(4): see **COMPANIES** vol 14 (2009) PARAS 263, 265.
- 35 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(2), Table Col 2 (as added: see note 2).
- 36 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(3) (as added: see note 2).
- 37 Charities Act 1993 s 2A(4)(b), Sch 1D para 6(1), (2) (as added: see note 2): see PARA 573.
- 38 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(4)(a) (as added: see note 2).
- 39 Charities Act 1993 s 2A(4)(a), Sch 1C para 2(1) (as added: see note 2).
- 40 Charities Act 1993 s 2A(4)(a), Sch 1C para 2(2) (as added: see note 2).
- 41 Charities Act 1993 s 2A(4)(a), Sch 1C para 2(3) (as added: see note 2).
- 42 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(4)(b) (as added: see note 2).

43 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(5), Table Col 3 (as added: see note 2).

44 Charities Act 1993 s 2A(4)(a), Sch 1C para 5 (as added: see note 2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(5) APPEALS TO THE TRIBUNAL/574. Applications for review by the Tribunal.

574. Applications for review by the Tribunal.

An application may be made to the Tribunal¹ for the review of a reviewable matter². The following decisions and orders of the Charity Commission³ are 'reviewable matters'⁴, and are dealt with elsewhere in this title:

- 527 (1) a decision⁵ to institute an inquiry with regard to a particular institution or class of institutions⁶;
- 528 (2) a decision⁷ not to make a common investment scheme⁸;
- 529 (3) a decision⁹ not to make a common deposit scheme¹⁰;
- 530 (4) a decision¹¹ not to make an order authorising dealings with charity property etc in relation to a charity¹²;
- 531 (5) a decision¹³ not to make an order for the conveyance, transfer, lease or other disposal of land held by or in trust for a charity¹⁴;
- 532 (6) a decision¹⁵ not to make an order in relation to a mortgage of land held by or in trust for a charity¹⁶;
- 533 (7) an order¹⁷ for the investigation and audit of the accounts of a company which is a charity¹⁸.

An application for the review of a reviewable matter may be made by the Attorney General or any person specified for each reviewable matter in the Charities Act 1993¹⁹, and the Commission is the respondent to such an application²⁰. However, where an order or decision gives effect to a decision of the Tribunal deciding a question referred to the Tribunal by the Commission or the Attorney General, no application for review may be made in respect of that order by a person who was at any stage party to the proceedings in which the question was referred²¹.

In determining the application the Tribunal must apply the principles which would be applied by the High Court on an application for judicial review²². It may dismiss the application or, if it allows the application, exercise any of the powers as specified for each of the directions and the order above²³. Where this includes the power to remit a matter to the Commission, the power is to remit the matter generally or for determination in accordance with a finding made or direction given by the Tribunal²⁴.

1 As to the Tribunal see PARA 573 note 1.

2 Charities Act 1993 s 2A(4)(a), Sch 1C para 4(1) (s 2A, Sch 1C and Sch 1D added by the Charities Act 2006 s 8(1), (3), Sch 4).

3 As to the Charity Commission see PARAS 538-572.

4 Charities Act 1993 s 2A(4)(a), Sch 1C para 3 (as added: see note 2). As to the Minister's power to make amendments or other modifications to this provision see PARA 573 note 2. As to the Minister see PARA 580.

5 le under the Charities Act 1993 s 8: see PARA 554.

6 See the Charities Act 1993 Sch 1C para 3(2)(a) (as added: see note 2).

- 7 le under the Charities Act 1993 s 24: see PARA 419.
- 8 See the Charities Act 1993 Sch 1C para 3(2)(b) (as added: see note 2).
- 9 le under the Charities Act 1993 s 25: see PARA 420.
- 10 See the Charities Act 1993 Sch 1C para 3(2)(c) (as added: see note 2).
- 11 le under the Charities Act 1993 s 26: see PARAS 381-385.
- 12 See the Charities Act 1993 Sch 1C para 3(2)(d) (as added: see note 2).
- 13 le under the Charities Act 1993 s 36: see PARA 395.
- 14 See the Charities Act 1993 Sch 1C para 3(2)(e) (as added: see note 2).
- 15 le under the Charities Act 1993 s 38: see PARA 398.
- 16 See the Charities Act 1993 Sch 1C para 3(2)(f) (as added: see note 2).
- 17 le under the Charities Act 1993 s 69(1): see PARA 560.
- 18 See the Charities Act 1993 Sch 1C para 3(2)(g) (as added: see note 2).
- 19 Charities Act 1993 s 2A(4)(a), Sch 1C para 4(2), Table Col 2 (as added: see note 2).
- 20 Charities Act 1993 s 2A(4)(a), Sch 1C para 4(3) (as added: see note 2).
- 21 Charities Act 1993 s 2A(4)(b), Sch 1D para 6(1), (2) (as added: see note 2): see PARA 573.
- 22 Charities Act 1993 s 2A(4)(a), Sch 1C para 4(4) (as added: see note 2).
- 23 Charities Act 1993 s 2A(4)(a), Sch 1C para 4(5) (as added: see note 2).
- 24 Charities Act 1993 s 2A(4)(a), Sch 1C para 5 (as added: see note 2).

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575. References to the Tribunal.

A question which has arisen in connection with the exercise by the Charity Commission¹ of any of its functions, and involves either the operation of charity law² in any respect or its application to a particular state of affairs, may be referred to the Tribunal³ by the Commission if the Commission considers it desirable to do so⁴. However, such a reference may only be made with the consent of the Attorney General⁵. The Commission must be a party to proceedings before the Tribunal on the reference⁶ and the Attorney General is entitled to be a party to such proceedings⁷. In addition, the following are entitled to be parties to such proceedings with the Tribunal's permission: (1) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference; (2) any such charity which is a body corporate; and (3) any other person who is likely to be so affected⁸.

A question which involves either the operation of charity law in any respect, or the application of charity law to a particular state of affairs, may be referred to the Tribunal by the Attorney General if he considers it desirable to do so⁹. The Attorney General must be a party to proceedings before the Tribunal on the reference¹⁰ and the Commission is entitled to be a party to such proceedings¹¹. In addition, the following are entitled to be parties to such proceedings with the Tribunal's permission: (a) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference; (b) any such charity which is a body corporate; and (c) any other person who is likely to be so affected¹².

Where a question which involves the application of charity law to a particular state of affairs has been referred to the Tribunal under either of the provisions above, the Commission must not take any steps in reliance on any view as to the application of charity law to that state of affairs until proceedings on the reference, including any proceedings on appeal, have been concluded, and any period during which an appeal, or further appeal, may ordinarily be made has ended¹³. However, this restriction does not apply in relation to any steps taken by the Commission with the agreement of the persons who are parties to the proceedings on the reference at the time when those steps are taken and, if they not such parties, the charity trustees of any charity which is likely to be directly affected by the taking of those steps and is not a party to the proceedings at that time¹⁴.

Where proceedings, including any proceedings on appeal, have been concluded, any period during which an appeal, or further appeal, may ordinarily be made has ended, and the question has been decided in proceedings on the reference, the Commission must give effect to that decision when dealing with the particular state of affairs to which the reference related¹⁵. No appeal¹⁶ or application for review¹⁷ in respect of an order, decision or direction by which the Commission so gives effect to the decision may be made to the Tribunal by a person who was at any stage a party to proceedings¹⁸ in which the question was referred¹⁹.

1 As to the Charity Commission see PARAS 538-572.

2 For these purposes 'charity law' means any enactment contained in, or made under, the Charities Acts 1993 or the Charities Act 2006, any other enactment specified in regulations made by the Minister and any rule of law which relates to charities: Charities Act 1993 s 2A(4)(b), Sch 1D para 7(1) (s 2A and Sch 1D added by the Charities Act 2006 s 8(1), (3), Sch 4). 'Enactment' means an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978 and includes an enactment whenever passed and made: Charities Act 1993 s 2A(4)(b), Sch 1D para 7(1) (as so added). The exclusions from the definition of charity in s 96(2) (see PARA 194) do not have effect for these purposes: s 2A(4)(b), Sch 1D para 7(2) (as so added).

3 As to the Tribunal see PARAS 573-576.

4 Charities Act 1993 s 2A(4)(b), Sch 1D para 1(1) (as added: see note 2).

5 Charities Act 1993 s 2A(4)(b), Sch 1D para 1(2) (as added: see note 2).

6 Charities Act 1993 s 2A(4)(b), Sch 1D para 1(3) (as added: see note 2).

7 Charities Act 1993 s 2A(4)(b), Sch 1D para 1(4)(a) (as added: see note 2).

8 Charities Act 1993 s 2A(4)(b), Sch 1D para 1(4)(b) (as added: see note 2).

9 Charities Act 1993 s 2A(4)(b), Sch 1D para 2(1) (as added: see note 2).

10 Charities Act 1993 s 2A(4)(b), Sch 1D para 2(2) (as added: see note 2).

11 Charities Act 1993 s 2A(4)(b), Sch 1D para 2(3)(a) (as added: see note 2).

12 Charities Act 1993 s 2A(4)(b), Sch 1D para 2(3)(b) (as added: see note 2).

13 Charities Act 1993 s 2A(4)(b), Sch 1D para 3(1), (2) (as added: see note 2). If this prevents the Commission from taking any steps which it would otherwise be permitted or required to take, and the steps in question may be taken only during a period specified in an enactment (the 'specified period'), then the running of the specified period is suspended for the period which begins with the date on which the question is referred to the Tribunal, and ends with the date on which (1) proceedings, including any proceedings on appeal, have been concluded; and (2) any period during which an appeal, or further appeal, may ordinarily be made has ended: s 2A(4)(b), Sch 1D para 4(1), (2) (as so added). Nothing in Sch 1D para 4 or s 74A (see PARA 217) prevents the specified period being suspended concurrently by virtue of those provisions: s 2A(4)(b), Sch 1D para 4(3) (as so added).

14 Charities Act 1993 s 2A(4)(b), Sch 1D para 5 (as added: see note 2).

15 Charities Act 1993 s 2A(4)(b), Sch 1D para 3(3) (as added: see note 2).

16 As to appeals to the Tribunal see PARA 573.

17 As to applications for review by Tribunal see PARA 574.

18 Rules made under the Charities Act 1993 s 2B(1) (see PARA 576) may include provision as to who is to be treated as being or not being a party to the proceedings for these purposes: s 2A(4)(b), Sch 1D para 6(3) (as added: see note 2).

19 Charities Act 1993 s 2A(4)(b), Sch 1D para 6(1), (2) (as added: see note 2). Any enactment, including one contained in the Charities Act 1993, which provides for an appeal or application to be made to the Tribunal has effect subject to this provision: s 2A(4)(b), Sch 1D para 6(4) (as so added).

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576. Practice and procedure.

The following applies in relation to appeals, applications or references to the Tribunal in relation to decisions, directions or orders¹ of the Charity Commission².

The Lord Chancellor³ may make rules: (1) specifying steps which must be taken before appeals, applications or references are made to the Tribunal (and the period within which any steps must be taken); (2) requiring the Commission to inform persons of their right to appeal or apply to the Tribunal following a final decision, direction or order of the Commission⁴.

Tribunal rules may make any other provision regulating the exercise of rights to appeal or to apply to the Tribunal and matters relating to the making of references to it⁵.

Rules made under the above provisions may confer a discretion on the Tribunal or any other person⁶.

1 In appeals, applications or references to the Tribunal which are mentioned in the Charities Act 1993 s 2A(4) (see PARA 573). As to the Tribunal see PARA 573 note 1.

2 Charities Act 1993 s 2B(1) (s 2B added by the Charities Act 2006 s 8(1); Charities Act 1993 s 2B(1)-(3) substituted by SI 2009/1834). The Charities Act 1993 s 86(3) (see PARA 584) applies in relation to rules of the Lord Chancellor under s 2B as it applies in relation to regulations and orders of the Minister under the Charities Act 1993: s 2B(9) (as so added).

3 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 477-479.

4 Charities Act 1993 s 2B(2) (as added and substituted: see note 2). Such rules must be made by statutory instrument: see s 2B(1)(8) (as so added). At the date at which this volume states the law no such rules were in force.

5 Charities Act 1993 s 2B(3) (as added and substituted: see note 2).

6 Charities Act 1993 s 2B(4) (amended by SI 2009/1834).

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577. Appeals from the Tribunal.

In the case of an appeal¹ against a decision of the Tribunal² which determines a question referred to it by the Charity Commission or the Attorney General³, the tribunal or court hearing

the appeal must consider afresh the question referred to the Tribunal, and may take into account evidence which was not available to the Tribunal⁴.

1 le an appeal under the Tribunals, Courts and Enforcement Act 2007 s 11 or s 13 (see **ADMINISTRATIVE LAW**).

2 As to the Tribunal see PARA 573 note 1.

3 As to the Charity Commission see PARAS 538-572. For the purposes of the Tribunals, Courts and Enforcement Act 2007 s 11(2) and s 13(2) the Commission and the Attorney General are to be treated as parties to cases before the Tribunal in respect of any such appeal, application or reference as is mentioned in the Charities Act 1993 s 2A(4) (see PARA 573): s 2C(5) (added by the Charities Act 2006 s 8(1); and amended by SI 2009/1834).

4 Charities Act 1993 s 2C(3) (added by the Charities Act 2006 s 8(1); and amended by SI 2009/1834).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(5) APPEALS TO THE TRIBUNAL/578. Intervention by the Attorney General.

578. Intervention by the Attorney General.

In the case of any proceedings before the Tribunal¹, or on an appeal from the Tribunal, to which the Attorney General is not a party², the appropriate body³, may at any stage of the proceedings direct that all the necessary papers in the proceedings be sent to the Attorney General⁴. Such a direction may be made by the appropriate body of its own motion or on the application of any party to the proceedings⁵.

The Attorney General may intervene in the proceedings in such manner as he thinks necessary or expedient, and argue before the appropriate body any question in relation to the proceedings which the appropriate body considers it necessary to have fully argued⁶, whether or not a direction is given⁷ as above⁸.

1 As to the Tribunal see PARA 573 note 1.

2 Charities Act 1993 s 2D(1) (s 2D added by the Charities Act 2006 s 8(1)).

3 For these purposes 'appropriate body' means the Tribunal or, in the case of an appeal from the Tribunal, the tribunal or court hearing the appeal: Charities Act 1993 s 2D(6) (added by SI 2009/1834).

4 Charities Act 1993 s 2D(2) (as added (see note 2); amended by SI 2009/1834).

5 Charities Act 1993 s 2D(3) (as added (see note 2); amended by SI 2009/1834).

6 Charities Act 1993 s 2D(4) (as added (see note 2); amended by SI 2009/1834).

7 le under the Charities Act 1993 s 2D(2).

8 Charities Act 1993 s 2D(5) (as added (see note 2); amended by SI 2009/1834).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(6) THE SECRETARY OF STATE AND THE WELSH MINISTERS/579. The role of the Secretary of State and the Welsh Ministers.

(6) THE SECRETARY OF STATE AND THE WELSH MINISTERS

579. The role of the Secretary of State and the Welsh Ministers.

In law 'Secretary of State' means one of Her Majesty's Principal Secretaries of State¹. Accordingly, many modern statutes refer simply to the 'Secretary of State' without reference to a particular department or ministry². Previously, the Secretary of State had numerous functions under the Charities Acts 1992 and 1993 but these are now vested in the Minister³.

At one time, the Secretary of State for Education and Science⁴ had functions concurrent with the Charity Commissioners⁵, as did the Secretary of State for Wales in relation to primary and secondary education in Wales⁶. By the Education Act 1973⁷ these functions were terminated, and first the Charity Commissioners, and then subsequently the Charity Commission⁸, who have concurrent jurisdiction over educational trusts, have exclusive jurisdiction over them in exactly the same way as they have jurisdiction over other charitable trusts. However, the Secretary of State for Children, Schools and Families⁹ does have powers in relation to the modification of trusts deeds relating to certain schools¹⁰ or relating to the provision of educational services or educational research¹¹. He also has powers in relation to religious educational trusts¹².

The Secretary of State has power as a 'relevant Minister'¹³ under the Charities Act 2006 to give financial assistance to any charitable, benevolent or philanthropic institution¹⁴ in respect of any of the institution's activities which directly or indirectly benefit the whole or any part of England, whether or not they also benefit any other area¹⁵. Such financial assistance may be given in any form, in particular by way of grants, loans, guarantees or incurring expenditure for the benefit of the person assisted¹⁶, and on such terms and conditions as he considers appropriate¹⁷. Those terms and conditions may, in particular, include provision as to:

- 534 (1) the purposes for which the assistance may be used¹⁸;
- 535 (2) circumstances in which the assistance is to be repaid, or otherwise made good, to him, and the manner in which that is to be done¹⁹;
- 536 (3) the making of reports to him regarding the uses to which the assistance has been put²⁰;
- 537 (4) the keeping, and making available for inspection, of accounts and other records²¹;
- 538 (5) the carrying out of examinations by the Comptroller and Auditor General²² into the economy, efficiency and effectiveness with which the assistance has been used²³;
- 539 (6) the giving by the institution of financial assistance in any form to other persons on such terms and conditions as the institution or he considers appropriate²⁴.

A person receiving assistance under this section must comply with the terms and conditions on which it is given, and compliance may be enforced by the relevant Minister²⁵. The relevant Minister may make arrangements for such financial assistance and any of his associated functions to be exercised by some other person²⁶. Such arrangements may make provision for the functions concerned to be so exercised either wholly or to such extent as may be specified in the arrangements, and either generally or in such cases or circumstances as may be so specified, but do not prevent the functions concerned from being exercised by a relevant Minister²⁷. As soon as possible after 31 March in each year, a relevant Minister must make a report on any exercise by him of any powers under this section during the period of 12 months ending on that day²⁸.

Ministerial functions relating to charities generally remain with the Secretary of State, however, certain functions such as sex discrimination²⁹ education³⁰ and places of worship³¹ have been transferred to the Welsh Ministers.

1 See the Interpretation Act 1978 s 5, Sch 1.

- 2 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.
- 3 As to the transfer of functions see PARA 580.
- 4 References to the Secretary of State were substituted for the original references to the Minister of Education by the Secretary of State for Education and Science Order 1964, SI 1964/490, art 2(1) (lapsed).
- 5 See the Charities Act 1960 s 2(1) (repealed). As to the Charity Commissioners see PARA 538.
- 6 See the Transfer of Functions (Wales) Order 1970, SI 1970/1536, art 2(2) (lapsed).
- 7 Education Act 1973 s 1(1)(a), Sch 1 para 1, Sch 2 Pt III. The functions were transferred as from 1 February 1974: see s 1(5); Education Act 1973 (Commencement) Order 1973, SI 1973/1661.
- 8 As to the transition from Charity Commissioners to the Charity Commission see PARA 538.
- 9 As to the Secretary of State for Children, Schools and Families see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 10 See the School Standards and Framework Act 1998 s 82; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 117.
- 11 See the Education Act 1996 s 489(3), (4); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 74.
- 12 See the Education Act 1996 ss 554-556; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1435.
- 13 'Relevant Minister' means the Secretary of State, the Minister of the Cabinet Office or the Lord Privy Seal: Charities Act 2006 s 70(11) (amended by SI 2007/2914). As to the Minister see PARA 580.
Similar powers to give financial assistance exist in respect of Wales (see text and notes 12-21) in relation to any charitable, benevolent or philanthropic institution in respect of any of the institution's activities which directly or indirectly benefit the whole or any part of Wales, whether or not they also benefit any other area: see the Charities Act 2006 s 71.
- 14 'Charitable, benevolent or philanthropic institution' means a charity or an institution other than a charity which is established for charitable, benevolent or philanthropic purposes: Charities Act 2006 s 70(10).
- 15 Charities Act 2006 s 70(1).
- 16 Charities Act 2006 s 70(2).
- 17 Charities Act 2006 s 70(3).
- 18 Charities Act 2006 s 70(4)(a).
- 19 Charities Act 2006 s 70(4)(b).
- 20 Charities Act 2006 s 70(4)(c).
- 21 Charities Act 2006 s 70(4)(d).
- 22 In relation to Wales the power under the Charities Act 2006 s 71 (see note 13), applies to the Auditor General for Wales instead of the Comptroller and Auditor General: see s 71(4)(e).
- 23 Charities Act 2006 s 70(4)(e).
- 24 Charities Act 2006 s 70(4)(f).
- 25 Charities Act 2006 s 70(5).
- 26 Charities Act 2006 s 70(6).
- 27 Charities Act 2006 s 70(7).
- 28 Charities Act 2006 s 70(8). In relation to s 71 a report must be published after 31 March each years on the exercise of powers under s 71 during the period of 12 months ending on that day: s 71(8).
- 29 See PARAS 13, 459.

30 See PARAS 70, 457, 458.

31 See PARA 195.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(7) THE MINISTER FOR THE CABINET OFFICE/580. The role of the Minister for the Cabinet Office.

(7) THE MINISTER FOR THE CABINET OFFICE

580. The role of the Minister for the Cabinet Office.

All references to the 'Minister' in the Charities Acts 1992, 1993 and 2006 are to the Minister for the Cabinet Office¹. The functions previously held by the Secretary of State² under the House to House Collections Act 1939³ and the Charities Acts 1992 and 1993 were transferred to the Minister on 13 December 2006 by the Transfer of Functions (Third Sector, Communities and Equality) Order 2006⁴.

The Minister must, before 8 November 2011⁵ appoint a person to review generally the operation of the Charities Act 2006 Act⁶. The review must address, in particular, the effect of the Act on excepted charities⁷, public confidence in charities, the level of charitable donations and the willingness of individuals to volunteer, the status of the Charity Commission as a government department and any other matters the Minister considers appropriate⁸. After the appointed person has completed his review, he must compile a report of his conclusions⁹ and the Minister must lay a copy before Parliament¹⁰.

1 Charities Act 1992 s 58(1) (definition added by the Charities Act 2006 s 75(1), Sch 8 para 90(1), (2)); Charities Act 1993 s 97(1) (definition added by the Charities Act 2006 s 75(1), Sch 8 para 174(d)); Charities Act 2006 s 78(6).

2 As to the Secretary of State see PARA 579.

3 The functions of the Secretary of State under the House to House Collections Act 1939 ss 2-4. Functions are also transferred in relation to the House to House Collections Regulations 1947, SR & O 1947/2662, which is made under the House to House Collections Act 1939 s 4.

4 The Transfer of Functions (Third Sector, Communities and Equality) Order 2006, SI 2006/2951.

5 The before the end of the period of five years beginning with the day on which the Charities Act 2006 was passed.

6 Charities Act 2006 s 73(1).

7 For these purposes a charity is an excepted charity if it falls within the Charities Act 1993 s 3A(2)(b) or (c) (see PARA 305) or alternatively if immediately before 31 January 2009 it fell within the Charities Act 1993 s 3(5)(b) or (5B)(b) (as in force at that time): Charities Act 2006 s 73(5).

8 Charities Act 2006 s 73(2).

9 Charities Act 2006 s 73(3).

10 Charities Act 2006 s 73(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(8) THE DIRECTOR OF PUBLIC PROSECUTIONS/581. Consent of Director of Public Prosecutions to instigation of certain proceedings.

(8) THE DIRECTOR OF PUBLIC PROSECUTIONS

581. Consent of Director of Public Prosecutions to instigation of certain proceedings.

Proceedings for certain specified offences relating to charities may only be instigated by or with the consent of the Director of Public Prosecutions¹. The offences in question relate to omission of a registered charity's status on official publications²; supplying false or misleading information³; failure to comply with orders made by the Charity Commission⁴; failure to comply with requirements as to annual reports and annual returns⁵; and acting as a trustee while disqualified⁶.

¹ Charities Act 1993 s 94(1). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

² *Ie* under the Charities Act 1993 s 5: see PARA 308.

³ *Ie* under the Charities Act 1993 s 11: see PARA 556.

⁴ *Ie* under the Charities Act 1993 s 18(14): see PARA 561. As to the Charity Commission see PARAS 538-572.

⁵ *Ie* under the Charities Act 1993 s 49: see PARAS 365, 376-377.

⁶ See the Charities Act 1993 s 94(2). The reference to the offence of acting as a trustee while disqualified is a reference to an offence under s 73(1) (see PARA 274): see s 94(2).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(8) THE DIRECTOR OF PUBLIC PROSECUTIONS/582. Offences by bodies corporate.

582. Offences by bodies corporate.

Where any offence under the Charities Act 1993, or any offence under the Charities Act 1992 or any regulations made under it, is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director¹, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly².

¹ In relation to a body corporate the affairs of which are managed by its members, 'director' means a member of the body corporate: Charities Act 1992 s 75; Charities Act 1993 s 95.

² Charities Act 1992 s 75 (amended by the Charities Act 1993 s 98(2), Sch 7); Charities Act 1993 s 95. In relation to the Charities Act 1993, s 95 is not limited to cases where the Director of Public Prosecutions is necessarily involved under s 94: see PARA 581.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(9) THE ATTORNEY GENERAL/583. The role of the Attorney General.

(9) THE ATTORNEY GENERAL

583. The role of the Attorney General.

The Attorney General¹ represents the beneficial interest, or 'objects', of the charity². His duty is to protect the interests of charity generally, and in so doing he contributes to a framework of supervision and control over charities in which the Charity Commission plays a significant, statutory role³. However, his role is particularly important in relation to exempt charities, which until such time as the Charities Act 2006 is fully in force⁴ are largely outside the Charity Commission's jurisdiction⁵.

The Attorney General is generally a necessary party to all claims relating to charities⁶, and he may appear either in person or by counsel⁷. Where the Attorney General is a proper party, the Solicitor General⁸ is the proper person to take his place if the Attorney General's office is vacant or if he is ill or concerned in the action in another capacity⁹.

1 As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529 et seq.

2 See *A-G v Brodie* (1846) 6 Moo PCC 12; *A-G v Bishop of Worcester* (1851) 9 Hare 328 at 361 per Turner V-C; *Ware v Cumberlege* (1855) 20 Beav 503; *Re Sekeford's Charity* (1861) 5 LT 488. See also *Brooks v Richardson* [1986] 1 All ER 952, [1986] 1 WLR 385.

3 As to the Charity Commission see PARAS 538-572.

4 As to the increased regulation by the Charity Commission which is provided for by the Charities Act 2006 s 12, Sch 5 see PARAS 316.

5 As to exempt charities see PARAS 315-317.

6 As to the role of the Attorney General in charity proceedings see further PARAS 590, 598 et seq. As to the costs of the Attorney General see PARAS 617-620. As to when the Attorney General is not a necessary party see PARA 603.

7 See PARA 609.

8 As to the Solicitor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

9 See *R v Wilkes* (1770) 4 Burr 2527 at 2554, HL, per Lord Mansfield; *Ludlow Corp'n v Greenhouse* (1827) 1 Bli NS 17 at 51, HL, per Lord Redesdale; *A-G v Bristol Corp'n* (1820) 2 Jac & W 294; *A-G v Ironmongers' Co* (1834) 2 My & K 576; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369; *Brookes v Richardson* [1986] 1 All ER 952, [1986] 1 WLR 385; and PARAS 588, 598.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/10. JURISDICTION OVER CHARITIES/(10) REGULATIONS AND ORDERS/584. Amendment to charity legislation to reflect changes to company law.

(10) REGULATIONS AND ORDERS

584. Amendment to charity legislation to reflect changes to company law.

The Minister¹ may make such amendments² to the Charities Acts 1993 or the Charities Act 2006 as he considers appropriate: (1) in consequence of, or in connection with, any changes made or to be made by any enactment to the provisions of company law³ relating to the accounts⁴ of charitable companies⁵ or to the auditing of, or preparation of reports in respect of, such accounts⁶; (2) for the purposes of, or in connection with, applying the statutory provisions for group accounts⁷ to charitable companies that are not required to produce group accounts under company law⁸.

- 1 As to the Minister see PARA 580.
- 2 For these purposes this includes repeals and modifications: Charities Act 2006 s 77(2).
- 3 'Company law' means the enactments relating to companies: Charities Act 2006 s 77(2).
- 4 For these purpose 'accounts' includes group accounts: Charities Act 2006 s 77(2).
- 5 'Charitable companies' means companies which are charities: Charities Act 2006 s 77(2).
- 6 Charities Act 2006 s 77(1)(a).
- 7 Ie the Charities Act 1993 Sch 5A: see PARAS 337, 353-355.
- 8 Charities Act 2006 s 77(1)(b).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(1) INTRODUCTION/585. Litigation involving charities.

11. COURT PROCEEDINGS

(1) INTRODUCTION

585. Litigation involving charities.

A charity or a charity trustee may be involved in various different kinds of civil proceedings. These include ordinary litigation involving charities relating to disputes about contracts¹, allegations of tortious conduct², property disputes³, interpretation of wills⁴ and other documents referring to charities or charitable purposes, applications under the Inheritance (Provision for Family and Dependants) Act 1975⁵, appeals from certain decisions of the Charity Commission⁶, applications for judicial review by or against the charity⁷, and 'charity proceedings'⁸. The following paragraphs are concerned exclusively with 'charity proceedings'.

- 1 See generally **CONTRACT**.
- 2 See generally **TORT**.
- 3 See eg **LANDLORD AND TENANT; REAL PROPERTY**.
- 4 As to wills generally see **WILLS**.
- 5 See **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 665 et seq.
- 6 As to the Charity Commission see PARAS 538-572.
- 7 As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq; **CIVIL PROCEDURE** vol 12 (2009) PARA 1530.
- 8 See PARA 586 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(2) RESTRICTIONS ON CHARITY PROCEEDINGS/586. Meaning of 'charity proceedings'.

(2) RESTRICTIONS ON CHARITY PROCEEDINGS

586. Meaning of 'charity proceedings'.

The Charities Act 1993 imposes restrictions on the taking of charity proceedings¹. 'Charity proceedings' means proceedings in any court in England or Wales brought under the court's jurisdiction with respect to charities² or under the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes³. The definition does not include proceedings to determine whether a valid charitable trust has been created⁴. The statutory provisions with regard to the taking of charity proceedings⁵ are concerned with jurisdiction over the domestic aspects of an institution, not with issues lying between the institution and outsiders⁶. Charity proceedings relate to the constitution and administration of a charity, which are internal matters, as opposed to disputes over contract, tort or property rights between a charity and a third party⁷, but they may involve as parties persons who are not trustees who have an interest in ensuring that the charity is properly administered⁸.

1 See the Charities Act 1993 s 33; the text and notes 2-3; and PARAS 587-588. The Charities Act 1960 s 28(9) (repealed) provided that the Charities Procedure Act 1812 and also the provisions of any local or private Act regulating the persons by whom or the manner or form in which charity proceedings may be brought should cease to have effect. The repeal did not, however, affect any proceedings begun before 1 January 1961 (ie the commencement of the Charities Act 1960): s 48(5) (repealed). The Charities Procedure Act 1812 (repealed), otherwise known as Romilly's Act, provided a summary procedure on petition for determining simple questions arising in the administration of a charitable trust.

2 This phrase has been considered in *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA (affg [1971] 3 All ER 449, [1971] 1 WLR 1303) (decided under previous legislation): see PARA 626. In the Charities Act 1993 s 33, 'charity' does not include an institution established under the laws of another legal system: *Gaudiya Mission v Brahmachary* [1998] Ch 341, [1997] 4 All ER 957, CA. As to the meaning of 'charity' in the Charities Act 1993 see PARA 1. As to the meaning of 'court' see PARA 175 note 12.

3 Charities Act 1993 s 33(8). See also *Brooks v Richardson* [1986] 1 All ER 952, [1986] 1 WLR 385; *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705. See also CPR 64.5(2)(a), (b) which defines charity proceedings as having the same meaning as in the Charities Act 1993 s 33(8). As to the CPR see PARA 589.

4 See *Re Belling, Enfield London Borough Council v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105; *Hauxwell v Barton-upon-Humber UDC* [1974] Ch 432, [1973] 2 All ER 1022; *Mills v Winchester Diocesan Board of Finance* [1989] Ch 428, [1989] 2 All ER 317 (all decided under previous legislation).

5 In the Charities Act 1993 s 33: see the text and note 3; and PARAS 587-588.

6 *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA (decided under previous legislation). The Charitable Trusts Act 1853 s 17 proviso (repealed by the Charities Act 1960) contained a similar restriction, in different terms, as to which see *Re Shum's Trusts* (1904) 91 LT 192; *Bassano v Bradley* [1896] 1 QB 645, DC; *Holme v Guy* (1877) 5 ChD 901, CA; *Rendall v Blair* (1890) 45 ChD 139, CA; *Re St Giles' and St George's, Bloomsbury, Volunteer Corps* (1858) 25 Beav 313; *Re Poplar and Blackwall Free School* (1878) 8 ChD 543; *Re Lister's Hospital* (1855) 6 De GM & G 184; *Falconer v Stearn* [1932] 1 Ch 509; *Braund v Earl of Devon* (1868) 3 Ch App 800; *Rooke v Dawson* [1895] 1 Ch 480.

7 See *Rendall v Blair* (1890) 45 ChD 139, CA.

8 See eg *Gunning v Buckfast Abbey Trustees Registered* (1994) Times, 9 June. See also *Ex p Scott* [1998] 1 WLR 226, sub nom *R v National Trust for Places of Historic Interest or Natural Beauty, ex p Scott* [1998] JPL 465, which indicated a wider meaning for charity proceedings, to include an application for judicial review of the decision of a charity's governing body where the charity is a public body susceptible to judicial review; and *R (on the application of Heather) v Leonard Cheshire Foundation* [2001] EWHC Admin 429 at para [97], [2001] All ER (D) 156 (Jun) at para [97] per Stanley Burton J ('judicial review proceedings against a charity exercising public functions are charity proceedings'). Cf *R (on the application of Brent London Borough Council) v Fed 2000* [2005] EWHC 2771 (Admin), [2005] All ER (D) 264 (Oct), where proceedings for judicial review were held not to be charity proceedings where there was no challenge to the due administration of the charity. Bringing charity proceedings in the Chancery Division is the procedure which must be followed in all but the most exceptional

cases: *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705 at 716 per Robert Walker J.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(2) RESTRICTIONS ON CHARITY PROCEEDINGS/587. Claimants in charity proceedings.

587. Claimants in charity proceedings.

Charity proceedings¹ may be taken with reference to a charity² by the charity, or by any of the charity trustees³, or by any person interested in the charity⁴, or, if it is a local charity⁵, by any two or more inhabitants of the area, but not by any other person⁶. This, however, does not prevent the taking of proceedings by the Charity Commission⁷ or by the Attorney General, with or without a relator⁸.

1 As to the meaning of 'charity proceedings' see PARA 586.

2 As to the meaning of 'charity' see PARA 1.

3 As to the meaning of 'charity trustees' see PARA 1 note 9.

4 See *Re Hampton Fuel Allotment Charity* [1989] Ch 484, sub nom *Richmond upon Thames London Borough Council v Rogers* [1988] 2 All ER 761, CA (to qualify as a claimant in his own right a person needs to have an interest materially greater than or different from that possessed by ordinary members of the public). A contract with the trustees relating to property of the charity does not suffice: *Haslemere Estates Ltd v Baker* [1982] 3 All ER 525, [1982] 1 WLR 1109. Nor are the executors of the will of the founder of a charity persons interested in the charity: *Bradshaw v University College of Wales, Aberystwyth* [1987] 3 All ER 200, [1988] 1 WLR 190. See also *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705.

See also *Gunning v Buckfast Abbey Trustees* (1994) Times, 9 June, where charity proceedings were properly brought by parents of children attending an independent school run by a charity, and although the parents had a contractual relationship with the school, they were not suing on their contracts but seeking the proper administration of the charity. They were persons interested in the charity because they had a moral and legal duty regarding the education of their children and thus had a concern that the charity should fulfil its functions properly which was greater than the concern of an ordinary member of the public.

5 As to the meaning of 'local charity' see PARA 187 note 10.

6 Charities Act 1993 s 33(1).

7 ie under the Charities Act 1993 s 32: see PARA 553. As to the Charity Commission see PARAS 538-572.

8 Charities Act 1993 s 33(6) (amended by the Charities Act 2006 s 75(1), Sch 8 paras 96, 125(1), (4)). As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(2) RESTRICTIONS ON CHARITY PROCEEDINGS/588. Authority or permission to bring charity proceedings.

588. Authority or permission to bring charity proceedings.

Apart from proceedings by the Attorney General, those taken by the Charity Commission under the powers conferred by the Charities Act 1993¹, and, until a day to be appointed², proceedings relating to an exempt charity³, no charity proceedings⁴ relating to a charity⁵ may be entertained or proceeded with in any court unless the Charity Commission has by order authorised the taking of the proceedings⁶. The Commission must not, without special reasons, authorise the

taking of proceedings where in its opinion the case can be dealt with by it under the other powers⁷ conferred by the Charities Act 1993⁸.

If an order of the Commission has been applied for and refused, the proceedings may nevertheless be entertained or proceeded with if, after the refusal, permission to take the proceedings is obtained from one of the judges of the High Court attached to the Chancery Division⁹.

These provisions do not make necessary an order for the taking of proceedings in a pending cause or matter, or for the bringing of any appeal¹⁰.

Under the former legislation¹¹ it was held that where proceedings were commenced without the authority which ought to have been obtained, the proper course was to stay the proceedings to see if authority could be obtained¹².

1 le under the Charities Act 1993 s 32: see PARA 553. As to the Charity Commission see PARAS 538-572.

2 As from a day to be appointed, the Charities Act 2006 s 12, Sch 5 para 8(1), (2) omits the exclusion of exempt charities in the Charities Act 1993 s 33(2) (see the text and note 6). At the date at which this volume states the law no such day had been appointed.

3 As to exempt charities see PARAS 315-318.

4 As to the meaning of 'charity proceedings' see PARA 586.

5 As to the meaning of 'charity' see PARA 1.

6 Charities Act 1993 s 33(2), (6) (s 33(2) prospectively amended (see note 2); s 33(2), (6) amended by the Charities Act 2006 s 75(1), Sch 8 paras 96, 125(1), (2), (4)). See also PARA 588.

7 le powers other than those conferred by the Charities Act 1993 s 32: see PARA 553.

8 Charities Act 1993 s 33(3) (amended by the Charities Act 2006 Sch 8 paras 96, 125(1), (3)).

9 Charities Act 1993 s 33(5) (amended by the Charities Act 2006 Sch 8 paras 96, 125(1), (4)). The application is made without notice at first and must be made within 21 days of the refusal of the order. As to the application for permission to take charity proceedings see CPR 64.6; and PARA 616. Leave was not granted in a case concerning Dulwich College Picture Gallery: see the *Report of the Charity Commissioners for England and Wales for 1979* (HC Paper (1979-80) no 608) paras 56-58.

10 Charities Act 1993 s 33(4). The equivalent provision under the former legislation (ie the Charitable Trusts Act 1853 s 17 (repealed)) was held to mean pending at the date of the commencement of the proceedings in question: *Re Lister's Hospital* (1855) 6 De GM & G 184. The question is to be determined on the facts of each case: *Ford's Charity* (1855) 3 Drew 324; *Re Jarvis' Charity* (1859) 1 Drew & Sm 97.

11 See note 10.

12 *Rendall v Blair* (1890) 45 ChD 139, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(2) RESTRICTIONS ON CHARITY PROCEEDINGS/589. Procedure.

589. Procedure.

Charity proceedings¹ and any appeal to the High Court, case stated or question referred for the opinion of that court under the Charities Act 1993 are assigned to the Chancery Division², and must be begun by a claim form³, except for applications for permission to appeal⁴ and applications for committal⁵.

- 1 As to the meaning of 'charity proceedings' see PARA 586.
- 2 CPR 64.1(3); *Practice Direction--Appeals* PD52 para 23.1, 23.2.
- 3 See CPR 7.2; and **CIVIL PROCEDURE** vol 11 (2009) PARA 116 et seq. Unless there is a serious dispute of fact requiring particulars of claim, it is usual to commence charity proceedings by the alternative procedure under CPR Pt 8 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 127 et seq) supported by witness statement. Application for permission to take charity proceedings must be brought under CPR Pt 8: see CPR 64.6(2); and PARA 616.
- 4 In the case of appeals, the appeal must be brought by an appeal notice: see CPR 52.3(2)(b); *Practice Direction--Estates, Trusts and Charities* PD64 para 10; and PARA 616.
- 5 See CPR Sch 1 RSC Ord 52 r 1(4).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(i) In general/590. Parties.

(3) CLAIMS AND OTHER PROCEEDINGS

(i) In general

590. Parties.

In the case of proceedings involving charities the general rules as to who are the proper parties¹ are subject to two qualifications. In the first place, as already stated, only specified persons may take charity proceedings²; in the second place, the Attorney General is generally a necessary party³.

He may either act alone ex officio as the officer of the Crown and, as such, the protector of charities, or ex relatione at the request of a private individual, called a relator, who thinks that the charity is being or has been abused⁴.

With the sanction of the Attorney General an ordinary action may be turned into a relator action, by amendment of the particulars of claim⁵. Otherwise claims of this kind, if instituted by parties other than the Attorney General or the Solicitor General⁶, are dismissed⁷, unless the Attorney General applies to be substituted⁸ as claimant and the court gives permission for the substitution⁹.

1 See generally **CIVIL PROCEDURE** vol 11 (2009) PARA 207 et seq. In a claim for the court to determine any question arising in the administration of a deceased person's estate or the execution of a trust, for an order for the administration of a deceased person's estate or for the execution of a trust: (1) all the trustees must be parties; (2) if the claim is made by trustees then any of them who do not consent to being a claimant must be a defendant; and (3) the claimant may make parties to the claim any persons with an interest in or claim against the estate, or an interest under the trust, who it is appropriate to make parties having regard to the nature of the order sought: CPR 64.4(1). This does not apply to the power of the High Court to authorise action to be taken in reliance on counsel's opinion as to the construction of a will or trust under the Administration of Justice Act 1985 s 48 (see **TRUSTS** vol 48 (2007 Reissue) PARA 634): CPR 64.4(1). Cf *Re HMF* [1976] Ch 33, [1975] 2 All ER 795.

2 See the Charities Act 1993 s 33(1); and PARA 587. As to the meaning of 'charity proceedings' see PARA 586.

3 Where the Attorney General is a proper party, the Solicitor General is the proper person to take his place if the Attorney General's office is vacant or if he is ill or concerned in the action in another capacity: *R v Wilkes* (1770) 4 Burr 2527 at 2554, HL, per Lord Mansfield; *Ludlow Corp'n v Greenhouse* (1827) 1 Bli NS 17 at 51, HL, per Lord Redesdale; *A-G v Bristol Corp'n* (1820) 2 Jac & W 294; *A-G v Ironmongers' Co* (1834) 2 My & K 576; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369; *Brookes v Richardson* [1986] 1 All ER 952, [1986] 1 WLR 385; and see PARAS 599, 606. As to when the Attorney General is not a necessary party see PARA 603. As to the Attorney General and the Solicitor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

Before the creation of the High Court of Chancery, proceedings by the Attorney General ex officio or at the relation of plaintiffs were taken by information, it being a public privilege that the Crown should be entitled to intervene by its officer for the purpose of asserting a public right: *A-G v Compton* (1842) 1 Y & C Ch Cas 417 at 427 per Knight Bruce V-C. After 1873 these proceedings became actions commenced by writ: cf *A-G v Shrewsbury Bridge Co* (1880) 42 LT 79. These actions were not affected by the abolition of Latin and English informations by the Crown Proceedings Act 1947 s 13, Sch 1; but, except so far as they are excepted by s 23(3)(a) as being relator proceedings, they appear to be civil proceedings by the Crown within s 23(1)(b): see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARAS 107, 110, 116. See further PARAS 599, 606.

4 *A-G v Logan* [1891] 2 QB 100 at 103, DC, per Wills J; and see *A-G v Cockermouth Local Board* (1874) LR 18 Eq 172 at 176 per Jessel MR. Except for the purposes of costs there is no practical difference between proceedings ex officio and ex relatione. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

5 *Caldwell v Pagham Harbour Reclamation Co* (1876) 2 ChD 221 (reclamation of land covered by sea); *Wallasey Local Board v Gracey* (1887) 36 ChD 593 at 599 per Stirling J (public nuisance). For earlier practice see *President etc of St Mary Magdalen College, Oxford v Sibthorp* (1826) 1 Russ 154; *A-G v Newcombe* (1807) 14 Ves 1 at 6 per Lord Eldon LC; *A-G v Vivian* (1826) 1 Russ 226; *A-G v East India Co* (1840) 11 Sim 380; *A-G v Cuming* (1843) 2 Y & C Ch Cas 139 at 149 per Knight Bruce V-C. If the claim is or becomes one within the statutory definition of 'charity proceedings' (see PARA 586), it should be begun by a claim form (see CPR 7.2; and PARA 589), but the court could, no doubt, permit it to proceed with particulars of claim (cf CPR 8.1(3)); and see **CIVIL PROCEDURE** vol 11 (2009) PARA 127 et seq. The claim should normally be a CPR Part 8 claim.

6 See note 3.

7 *A-G v Hewitt* (1804) 9 Ves 232; *A-G v Green* (1820) 1 Jac & W 303 at 305 per Lord Eldon LC; *Strickland v Weldon* (1885) 28 ChD 426; *A-G v Wyggaston Hospital* (1853) 16 Beav 313, where a petition presented in the name, but without the authority, of the Attorney General was dismissed.

8 See under CPR 19.2: see **CIVIL PROCEDURE** vol 11 (2009) PARA 213.

9 Cf *Hauxwell v Barton-upon-Humber UDC* [1974] Ch 432, [1973] 2 All ER 1022.

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591. Control of proceedings by the court.

The court has a duty to actively manage cases¹ and its general powers of management are set out in the Civil Procedure Rules².

¹ See CPR 1.4; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 35, 246.

² See CPR Pt 3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 247 et seq. Formerly, it was the case that the Attorney General had entire control of the proceedings, whether they were ex officio or at the request of a relator: *Andrew v Master and Wardens of the Merchant Taylors' Co* (1800) 7 Ves 223, HL; *A-G v Hewitt* (1804) 9 Ves 232; *Ludlow Corp'n v Greenhouse* (1827) 1 Bli NS 17 at 65, HL, per Lord Redesdale; *A-G v Ironmongers' Co* (1840) 2 Beav 313 at 328-329 per Lord Langdale MR; *A-G v Haberdashers' Co* (1852) 15 Beav 397. See also the non-charity case of *LCC v A-G* [1902] AC 165, HL. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

The Attorney General had control even where he did not act personally: *A-G v Hewitt* (1804) 9 Ves 232. No amendment could be made (*A-G v Fellows* (1820) 1 Jac & W 254), or notice of motion given (*A-G v Wright* (1841) 3 Beav 447), without his consent. He could also, at any time, stay the proceedings: *A-G v Ironmongers' Co* (1840) 2 Beav 313 at 329 per Lord Langdale MR; *A-G v Newark-upon-Trent Corp'n* (1842) 1 Hare 395. A reference to arbitration could only be made with his sanction: *A-G v Hewitt* (1804) 9 Ves 232; *A-G v Fea* (1819) 4 Madd 274; and see *Prior v Hembrow* (1841) 8 M & W 873. His consent was also necessary before an award could be acted upon: *A-G v Hewitt* (1804) 9 Ves 232; and see *A-G v Clements* (1823) Turn & R 58 at 61 per Lord Eldon LC.

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592. Duty of Attorney General and of court.

It has been held that it is not the duty of the Attorney General in all charity cases to contend for his strict legal rights when the result of enforcing them would be oppressive to individuals. If, however, he insists on his strict rights, the court will enforce them¹.

The court formerly exercised a quasi-custodial jurisdiction over a charity when proceedings were brought for its regulation or administration².

¹ *A-G v Brettingham* (1840) 3 Beav 91 at 95 per Lord Langdale MR. See also *Re Snowden, Shackleton v Eddy, Re Henderson, Henderson v A-G* [1970] Ch 700, [1969] 3 All ER 208; and PARA 422. As to the Attorney-General see PARA 583.

² See *A-G v Governors of Harrow School* (1754) 2 Ves Sen 551 at 552 per Lord Hardwicke LC: 'though I will make no decree at present, yet I will not dismiss the information, but still keep a hand over them'. The principal example of this attitude was that the wrong prayer was never fatal in a charity case where it appeared that some relief might be given; cf *A-G v Coopers' Co* (1812) 19 Ves 187 at 194 per Lord Eldon LC: 'the court is not only to attend to an actual complaint but to see whether there is any cause for complaint'. Actions were generally not dismissed for want of form, though care was taken not to injure the defendant. These principles may be regarded as obsolete for general relief may now be given (see the Supreme Court Act 1981 s 49; and **EQUITY** vol 16(2) (Reissue) PARAS 499-500), and amendment to statements of case is more freely available (see CPR Pt 17; and **CIVIL PROCEDURE** vol 11 (2009) PARA 607 et seq).

In addition, the Charity Commission has powers of supervision, guidance and inquiry in relation to charities: see PARA 538 et seq. As to the Charity Commission see PARAS 538-572.

UPDATE

592 Duty of Attorney General and of court

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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593. Information to Attorney General with a view to proceedings by him.

Where it appears to the Charity Commission¹ that it is desirable for legal proceedings to be taken with reference to any charity² or its property or affairs, and for the proceedings to be taken by the Attorney General, it must so inform him and send him such statements and particulars as it thinks necessary to explain the matter³.

¹ As to the Charity Commission see PARAS 538-572.

² As to the meaning of 'charity' see PARA 1. Until a day to be appointed, exempt charities are excluded from this provision: see the Charities Act 1993 s 33(7) (prospectively amended by the Charities Act 2006 ss 12, 75(2), Sch 5 para 8(1), (3), Sch 9). At the date at which this volume states the law no such day had been appointed.

3 Charities Act 1993 s 33(7) (amended by the Charities Act 2006 Sch 8 paras 96, 125(1), (5)). This may arise out of an application for the Commission's authority under the Charities Act 1993 s 33 to take charity proceedings or otherwise: s 33(7) (as so amended). As to the meaning of 'charity proceedings' see PARA 586. The Charity Commission may, by its own motion, also bring legal proceedings with reference to charities or the property or affairs of charities, with the agreement of the Attorney General: see s 32(5); and PARA 553.

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594. Proceedings by trustees.

If the Attorney General declines to interfere in a dispute over the administration of a trust, and the trustees of the charity differ amongst themselves as to the proper mode of administration, a certain number may bring the matter before the court by a claim on behalf of themselves and others, making some of the dissentients and the Attorney General defendants¹.

1 *Lang v Purves* (1862) 8 Jur NS 523 at 525, PC. Such proceedings would require the consent of the Charity Commission or the permission of the court: see PARA 588. As to one or more of numerous parties suing or defending on behalf of all see CPR 19.6; *A-G v Fowler* (1808) 15 Ves 85 at 87; *Milligan v Mitchell* (1837) 3 My & Cr 72; and **CIVIL PROCEDURE** vol 11 (2009) PARA 229.

It is now relatively uncommon for the Attorney General to commence charity proceedings. It is more usual for one or more of the trustees to do so, making any dissentient trustees, as well as the Attorney General, defendants: see *Varsani v Jesani* [1999] Ch 219, [1998] 3 All ER 273, CA.

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595. Evidence.

In any proceedings, the printed copies of the reports of the Charity Commissioners¹ for inquiring concerning charities between 1818 and 1837² and the printed copies of the reports which were made for various counties and county boroughs to the Charity Commissioners by their assistant Commissioners and presented to the House of Commons as returns to orders of various dates between 8 December 1890 and 9 September 1909, are admissible as evidence of the documents³ and facts stated in them⁴.

Evidence of any order, certificate or other document issued by the Charity Commission⁵ or the Charity Commissioners⁶ may be given by means of a copy which it retained, or which is taken from a copy so retained and evidence of an entry in any register kept by it may be given by means of a certified copy of the entry⁷. In each case, the copy must be certified to be a true copy by any member of the staff of the Commission generally or specially authorised by the Commission to act for that purpose⁸.

The official seal of the official custodian for charities is judicially noticed⁹.

In any legal proceedings instituted¹⁰ by the Charity Commission, or instituted by the Attorney General in respect of a charity¹¹, a copy of the report of the person conducting an inquiry¹² is admissible, if certified by the Commission to be a true copy, as evidence of any fact stated in the report, and as evidence of the opinion of that person as to any matter referred to in it¹³.

- 1 As to the Charity Commissioners see PARA 538.
- 2 le who were appointed under the Act 58 Geo 3 c 91 (the Inquiry Concerning Charities Act 1838) (repealed).
- 3 As to the meaning of 'document' see PARA 260 note 2.
- 4 Charities Act 1993 s 93(2).
- 5 As to the Charity Commission see PARAS 538-572.
- 6 Charities Act 1993 s 93(6) (added by the Charities Act 2006 s 75(1), Sch 8 paras 96, 172).
- 7 Charities Act 1993 s 93(3) (substituted by the Charities Act 2006 Sch 8 paras 96, 172).
- 8 Charities Act 1993 s 93(4) (added by the Charities Act 2006 Sch 8 paras 96, 172). A document purporting to be such a copy must be received in evidence without proof of the official position, authority or handwriting of the person certifying it: Charities Act 1993 s 93(5) (added by the Charities Act 2006 Sch 8 paras 96, 172).
- 9 See the Charities Act 1993 s 2(1); and PARA 297.
- 10 le under the Charities Act 1993 Pt IV (ss 13-35).
- 11 As to the meaning of 'charity' see PARA 1.
- 12 le under the Charities Act 1993 s 8: see PARAS 554-555.
- 13 Charities Act 1993 s 34(1), (2) (amended by the Charities Act 2006 Sch 8 paras 96, 126). A document purporting to be a certificate issued for the purposes of the Charities Act 1993 s 34(1) must be received in evidence and is deemed to be such a certificate, unless the contrary is proved: s 34(3).

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596. Court's discretion.

Modern practice of the courts has been to consider what is in the interests of the charity in determining the issues arising in the case, and if it considers that the proceedings themselves are against its interests it will make this very clear, and either encourage the parties to settle or refuse relief on grounds of expense¹. By its wide discretion over costs the court can discourage parties taking useless proceedings even if the proceedings are sanctioned by the Attorney General².

The court has disapproved of charity proceedings being promoted by public meetings and supported by public subscriptions³.

Actual or contemplated breaches of trust may be restrained by injunction⁴. When necessary a claim for an injunction may be brought by a trustee against his co-trustees⁵.

1 See eg *Governing Body of the Henrietta Barnett School v Hampstead Garden Suburb Institute* (1995) 93 LGR 470, sub nom *Re Hampstead Garden Suburb Institute* (1995) Times, 13 April; *Varsani v Jesani* [1999] Ch 219, [1998] 3 All ER 273, CA. However, there are many cases in which the sole question for the court is whether proposed proceedings are in the interests of the charity: see eg *Weth v A-G* (3 December 1997, unreported); affd [2001] EWCA Civ 263, [2001] All ER (D) 314 (Feb) (proposed appeal against appointment of receiver and manager for charity held not in the interests of the charity because of charity's limited financial resources).

2 *A-G (ex rel Everett and Bottomley) v Merchant Tailors' Co* (1834) 5 LJCh 62; but see *A-G v Cullum* (1836) 1 Keen 104; and PARA 449.

Instead of acting according to the strict rules of law, the court had discretion to refer matters arising out of proceedings to the Attorney General, and to act on his certificate or report: *A-G v Exeter Corpn* (1827) 2 Russ 362 (where the court referred the matter to the Attorney General to certify whether a charity might accept from

its debtor a smaller sum than was actually due); *A-G v Green* (1820) 1 Jac & W 303; *A-G v Carlisle Corpn* (1831) 4 Sim 275; *A-G v Pretymen* (1841) 4 Beav 462 at 467 per Lord Langdale MR; *A-G v Tufnell* (1849) 12 Beav 35 at 41 per Lord Langdale MR; and see *A-G v Brettingham* (1840) 3 Beav 91 (where, in a hard case, the decision was postponed in order that the Attorney General might come to some arrangement). However, questions arising on the construction of wills and other documents were not referred to the Attorney General: *A-G v Fea* (1819) 4 Madd 274.

3 *A-G v Bishop of Worcester* (1851) 21 LJCh 25 at 46 per Turner V-C.

4 *Rigall v Foster* (1853) 18 Jur 39 (to restrain improper mortgage by charity trustees); *A-G v Welsh* (1844) 4 Hare 572 (to prevent user of chapel for unauthorised form of worship); *A-G v Murdoch* (1849) 7 Hare 445 (affd (1852) 1 De GM & G 86); *Cooper v Gordon* (1869) LR 8 Eq 249 (to restrain ministers from officiating); *Milligan v Mitchell* (1833) 1 My & K 446 (to prevent election of unlicensed minister). As to injunctions generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq.

5 *Re Chertsey Market, ex p Walthew* (1819) 6 Price 261 at 279; *Perry v Shipway* (1859) 4 De G & J 353 (where an improper retainer of a chapel by the minority of the trustees was prevented by the majority).

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597. Compromise.

Questions relating to charities may be compromised and the terms of the compromise confirmed by the court¹.

Trustees for charities have power to compromise claims under the Trustee Act 1925². In addition, a compromise may be approved by the Charity Commission³ under the Charities Act 1993⁴.

Where the Attorney General is a party to any legal proceedings affecting a charity, no compromise can be enforced without his sanction⁵. Where, in proceedings in which a charity is cited but does not appear, the Attorney General assents to a compromise on behalf of the absent charity, that charity is bound by the compromise⁶.

1 This may happen, for example, in cases where it is doubtful whether a bequest or devise to charity is valid, and a compromise is arrived at by a division of the property between the charity and other claimants, such as the persons entitled on intestacy, and residuary legatees: *A-G v Landerfield* (1743) 9 Mod Rep 286; *Re Simpson's Will* (circa 1786) cited in 5 Ves 304; *A-G v Bishop of Oxford* (1786) cited in 4 Ves 431; *Andrew v Master and Wardens of the Merchant Taylors' Co* (1800) 7 Ves 223; *Andrew v Trinity Hall, Cambridge* (1804) 9 Ves 525 at 532-533 per Grant MR. See also *A-G v Trevelyan* (1847) 16 LJCh 521 and *Re Freeston's Charity, Sylvester v Master and Fellows of University College, Oxford* [1978] 1 All ER 481 at 490, [1978] 1 WLR 120 at 130 per Fox J; affd [1979] 1 All ER 51, [1978] 1 WLR 741, CA, without discussing this point.

2 See the Trustee Act 1925 s 15; and **TRUSTS** vol 48 (2007 Reissue) PARA 1052.

3 As to the Charity Commission see PARAS 538-572.

4 See the Charities Act 1993 s 26(2); and PARA 381.

5 *Andrew v Master and Wardens of the Merchant Taylors' Co* (1800) 7 Ves 223; *Andrew v Trinity Hall, Cambridge* (1804) 9 Ves 525 at 532-533 per Grant MR; *A-G v Exeter Corpn* (1827) 2 Russ 362; *A-G v Fishmongers' Co* (1837) Coop Pr Cas 85; *A-G v Ludlow Corpn* (1842) 6 Jur 1003; *A-G v Trevelyan* (1847) 16 LJCh 521; *A-G v Boucherett* (1858) 25 Beav 116.

6 *Re King, Jackson v A-G* [1917] 2 Ch 420.

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598. Service on Treasury Solicitor.

In all charity proceedings, any document required or authorised to be served on the Charity Commission¹ or the Attorney General must also be served on the Treasury Solicitor².

¹ As to the Charity Commission see PARAS 538-572.

² CPR *Practice Direction--Estates, Trusts and Charities* PD 64 para 8. This must be in accordance with *Practice Direction--Crown Proceedings* PD 66 para 2.1. As to the Treasury Solicitor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 541. *Practice Direction--Estates, Trusts and Charities* PD 64 para 8 refers to the Charity Commissioners rather than the Charity Commission; however, this has effect as if it were a reference to the Charity Commission for England and Wales: see the Charities Act 2006 s 6(5); and PARA 538. As to the Charity Commission see PARAS 538-572.

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(ii) The Attorney General as a Party

599. Attorney General a necessary party.

The Attorney-General¹ is a necessary party to all charity proceedings², other than any commenced by the Charity Commission³, and must be joined as a defendant if he is not a claimant⁴.

Thus where proceedings⁵ are necessary to test the validity of an alleged charitable gift⁶, even where the class to benefit is a foreign community⁷, or to determine whether a claim to the benefit of a charity is properly founded⁸, or to enforce the execution of a charitable purpose, or to remedy abuse or misapplication of charitable funds, or to administer a charity⁹, the Attorney General is generally¹⁰ a necessary party¹¹, and is normally the proper claimant¹². He represents the beneficial interest, in other words the objects, of the charity¹³. Even if all the subscribers to a charitable fund are made claimants, a claim for the regulation of the charity is defective unless the Attorney General is also a party¹⁴.

¹ The Solicitor General may in some circumstances discharge the Attorney General's functions: see PARA 590 note 3. As to the Attorney General see PARA 583.

² As to the meaning of 'charity proceedings' see PARA 586. The Attorney General's right to file an information (which was the procedure prior to the creation of the High Court of Chancery: see PARA 590 note 3), and consequently his right to take proceedings today, was founded on the Crown's prerogative as *parens patriae* (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 309) to inform the court of and demand a remedy for an injustice perpetrated against a subject of the Crown (eg a charity) who was incompetent to enforce a claim in person: see Shelford's Law of Mortmain (1836) 399; *A-G v Brown* (1818) 1 Swan 265 at 291; *Wellbeloved v Jones* (1822) 1 Sim & St 40; *A-G v Compton* (1842) 1 Y & C Ch Cas 417 at 427 per Knight Bruce V-C; *A-G v Magdalen College, Oxford* (1854) 23 LJCh 844 at 852 per Romilly MR. See also *Re Weir Hospital* [1910] 2 Ch 124 at 130, CA; *Re Belling, Enfield London Borough Council v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105; *Hauxwell v Barton-upon-Humber UDC* [1974] Ch 432, [1973] 2 All ER 1022. Moreover, the Attorney General is the protector of the interests of all charities beneficially entitled under charitable gifts, and all beneficiaries are bound if he is made a party: *Re Sekeford's Charity* (1861) 5 LT 488; *Ware v Cumberlege* (1855) 20 Beav 503.

3 *Practice Direction--Estates, Trusts and Charities* PD 64 para 7 refers to the Charity Commissioners rather than the Charity Commission; however, this has effect as if it were a reference to the Charity Commission for England and Wales: see the Charities Act 2006 s 6(5); and PARA 538. As to the Charity Commissioners see PARA 538. As to the Charity Commission see PARAS 538-572.

4 *Practice Direction--Estates, Trusts and Charities* PD 64 para 7.

5 See PARA 590 note 3.

6 See eg *Kirkbank v Hudson* (1819) 7 Price 212.

7 See *Re Love, Naper v Barlow* [1932] WN 17 (gift for benefit of parishes in Republic of Ireland: Attorney General of the Republic held not to be a proper party and struck out; Attorney General directed to be added).

8 *Re Magdalen Land Charity, Hastings* (1852) 9 Hare 624, where the proceeds of the charity had for many years been applied for other purposes.

9 See PARA 600.

10 *Wellbeloved v Jones* (1822) 1 Sim & St 40; *Ware v Cumberlege* (1855) 20 Beav 503; *Bouhey v Minor* [1893] P 181 (compromise). The cases distinguish between gifts for charity generally, which cannot be represented by anyone other than the Attorney General, and cases where there are specified individual charities, when the Attorney General's presence is not universally necessary. However, if there is a gift to charity trustees and the question is whether the trust is validly established, the persons named as trustees are the proper parties, and it may not be necessary for the Attorney General to be a party: *Practice Note* [1945] WN 38. See also *Re HMF* [1976] Ch 33, [1975] 2 All ER 795.

11 *Wellbeloved v Jones* (1822) 1 Sim & St 40; *Christ's Hospital Governors v A-G* (1846) 5 Hare 257 (Attorney General as defendant); *Philipps v A-G* [1932] WN 100 (dormant fund, raised by subscription; cy-près application; Attorney General as defendant).

12 *Strickland v Weldon* (1885) 28 ChD 426 at 430 per Pearson J; *Re Belling, Enfield London Borough Council v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105; *Hauxwell v Barton-upon-Humber UDC* [1974] Ch 432, [1973] 2 All ER 1022; but see *Baldry v Feintuck* [1972] 2 All ER 81, [1972] 1 WLR 552, where the Attorney General was not a party. When appearing on behalf of a charity, the Attorney General is not like an ordinary claimant endeavouring to obtain redress for a private wrong. It is one of his duties to protect the defendant against any hardship which he might suffer at the hands of the relators, eg if they mislead him or withhold documents or other necessary information: *A-G v Clapham* (1853) 10 Hare App II, lxviii at lxx per Wood V-C. Although the Attorney General is a proper claimant, he is most often involved as the defendant: see PARA 602. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

In High Court proceedings for the construction of wills or other documents or by personal representatives for directions, the Attorney General, if a party where a charity is concerned, is usually made a defendant: see eg *Re Lawton, Gartside v A-G* [1936] 3 All ER 378 (question whether bequest should lapse or be applied cy-près).

13 *A-G v Brodie* (1846) 6 Moo PCC 12; *A-G v Bishop of Worcester* (1851) 9 Hare 328 at 361 per Turner V-C; *Ware v Cumberlege* (1855) 20 Beav 503; *Re Sekeford's Charity* (1861) 5 LT 488. See also *Brooks v Richardson* [1986] 1 All ER 952, [1986] 1 WLR 385.

14 *Stickland v Weldon* (1885) 28 ChD 426. See also *Minn v Stant* (1851) 15 Beav 49, where, for a special transaction, it was held that the subscribers were necessary parties; but see *Baldry v Feintuck* [1972] 2 All ER 81, [1972] 1 WLR 552.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(ii) The Attorney General as a Party/600. Administration proceedings.

600. Administration proceedings.

In administration proceedings where a question arises as to the application of a gift for charitable purposes, the Attorney General is a necessary party to represent the interests of charity in general¹. Where there are gifts to specified individual charities and the establishment

of a scheme or rules is required for the regulation of the internal conduct of the charity, the presence of the Attorney General is necessary². Similarly, he is generally a necessary party when the question is whether a particular bequest is charitable³, or is applicable cy-près⁴, or where there is a gift to an established charitable institution to be held upon trusts differing from those upon which the general funds of the institution are held⁵.

The Attorney General is not a necessary party in administration proceedings where the legacy is to an established charitable institution as part of its general funds⁶, or to named trustees and the question is the validity of the trusts of which they are trustees⁷, or to an action for account in respect of a legacy given to a charity⁸, or where annual sums are given to specified trustees to be distributed in charity⁹, or where a capital sum is given for immediate distribution¹⁰. Where the question is whether a charity is entitled to a particular legacy or not, the Attorney General may be made a party as being in the nature of a trustee for the charity, but his presence is not necessary, and the court prefers that the charity should itself appear rather than that the Attorney General should represent it¹¹.

1 *Ware v Cumberlege* (1855) 20 Beav 503 at 511 per Romilly MR. See also *A-G v Bowyer* (1798) 3 Ves 714 at 726 per Lord Hardwicke LC; *Boughey v Minor* [1893] P 181; *Re Pyne, Lilley v A-G* [1903] 1 Ch 83; and *Practice Note* [1945] WN 38.

2 *Ware v Cumberlege* (1855) 20 Beav 503. See also *Practice Direction--Estates, Trusts and Charities* PD 64 para 7; and PARA 599.

3 *Cook v Duckenfield* (1743) 2 Atk 562 at 564 per Lord Hardwicke LC; and see PARA 599.

4 *Re Taylor, Martin v Freeman* (1888) 58 LT 538. A legacy may be ordered to be paid to a legatee on his undertaking to the Attorney General to apply the sum for charitable purposes: see *Re Reddish, Penton v Waters* [1934] WN 198. As to the doctrine of cy-près see PARA 208 et seq.

5 *Wellbeloved v Jones* (1822) 1 Sim & St 40; *Sons of the Clergy Corp'n v Mose* (1839) 9 Sim 610; and see *A-G v Warren* (1818) 2 Swan 291.

6 *Wellbeloved v Jones* (1822) 1 Sim & St 40; *Re M'Auliffe's Goods* [1895] P 290.

7 See *Practice Note* [1945] WN 38: in such cases the position is that there is no universal rule that the Attorney General must be a party.

8 *Chitty v Parker* (1792) 4 Bro CC 38.

9 *Waldo v Caley* (1809) 16 Ves 206; *M'Coll v Atherton* (1848) 12 Jur 1042. See also *Horde v Earl of Suffolk* (1833) 2 My & K 59 (where the Attorney General was a party but appeared to claim the legacy on behalf of the Crown, alleging failure of the charitable bequest and of the next of kin).

10 *Re Barnett* (1860) 29 LJCh 871. But see *Re Lea, Lea v Cooke* (1887) 34 ChD 528 (where the Attorney General was a party, the question being whether a charitable legacy should be paid over without a scheme).

11 *Ware v Cumberlege* (1855) 20 Beav 503.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(ii) The Attorney General as a Party/601. Claims by Crown.

601. Claims by Crown.

The Attorney General represents the Crown where the Crown is claiming beneficially¹. Therefore, when the Crown's private rights conflict with its rights as protector of charities, one of the law officers appears on behalf of the Crown's private interests and the other represents the charitable interest².

The Attorney General had to be a party to legal proceedings where the question concerned the Crown's right to appoint under the sign manual, even before the right was delegated to him³.

1 *A-G v Magdalen College, Oxford* (1854) 18 Beav 223 at 241 per Romilly MR.

2 *A-G v Bristol Corp* (1820) 2 Jac & W 294 at 312 per Lord Eldon LC; *A-G v Ironmongers' Co* (1834) 2 My & K 576 at 578; *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369.

3 *De Themmines v De Bonneval* (1828) 5 Russ 288. See PARA 509.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(ii) The Attorney General as a Party/602. Attorney General as defendant.

602. Attorney General as defendant.

The Attorney General may be made a defendant in a claim by charity trustees for an account of the charity property and a personal discharge¹; or for the purpose of protecting the interests of a charity², as, for example, where a claim is brought by executors to determine the validity of a doubtful charitable bequest³; or to decide whether a testator's general charitable intention should be carried into effect by a court scheme or under the royal sign manual⁴.

1 *Clum Hospital Warden and Brethren v Lord Powys* (1842) 6 Jur 252; *Christ's Hospital Governors v A-G* (1846) 5 Hare 257. In such claims the trustees must render such accounts as the Attorney General demands, and, if he desires it, the court may direct a scheme. As to proceedings by trustees see PARA 594. As to the direction of schemes see PARA 177 et seq.

2 *Ludlow Corp v Greenhouse* (1827) 1 Bli NS 17 at 66, HL, per Lord Redesdale.

3 See *Re Waring, Hayward v A-G* [1907] 1 Ch 166; *Re Pardoe, McLaughlin v A-G* [1906] 2 Ch 184; *Re Mann, Hardy v A-G* [1903] 1 Ch 232.

4 *Re Pyne, Lilley v A-G* [1903] 1 Ch 83; *Re Bennett, Sucker v A-G* [1960] Ch 18, [1959] 3 All ER 295.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(ii) The Attorney General as a Party/603. When Attorney General is not a necessary party.

603. When Attorney General is not a necessary party.

The Attorney General is not a necessary party where the proceedings concern a private charity¹, or where the trust is not charitable², or where, whether the trust is charitable or not, the parties taking the proceedings do so under express statutory powers³, or where third persons are taking proceedings against charity trustees for specific performance of an agreement⁴.

1 *Anon* (1745) 3 Atk 277 (society for providing for necessities of its members and their widows, being in the nature of a private charity, the Attorney General on behalf of the Crown is not concerned to see to its proper application). A private charity (see PARA 59) in this sense is one for the benefit of private individuals, and not of the public or a section of the public (see PARA 8). Quære whether this would now be followed. If it is right, it is on the basis that the institution is not charitable at all in the legal sense.

2 *A-G v Hewer* (1700) 2 Vern 387 (school not a charity school); *A-G v Whorwood* (1750) 1 Ves Sen 534 at 536 per Lord Hardwicke LC (where it was held, in the case of a devise to a college, that there were no grounds for an information (see PARA 590 note 3) by the Attorney General); *A-G v Brereton* (1752) 2 Ves Sen 425 at 426 per Lord Hardwicke LC; *A-G v Newcombe* (1807) 14 Ves 1 at 7 per Lord Eldon LC; *Prestney v Colchester Corpn and A-G* (1882) 21 ChD 111.

The cases deciding that advowsons held on trust for parishioners were not charity property and that therefore an information by the Attorney General was not maintainable with regard to such trusts (see *A-G v Parker* (1747) 1 Ves Sen 43; *A-G v Forster* (1804) 10 Ves 335; *A-G v Newcombe*; *A-G v Webster* (1875) LR 20 Eq 483 at 491 per Jessel MR) cannot be supported on that point since the cases of *Re St Stephen, Coleman Street*, *Re St Mary the Virgin, Aldermanbury* (1888) 39 ChD 492 and *Hunter v A-G* [1899] AC 309 at 315, HL, per Earl of Halsbury LC, which decided that such trusts are charitable. See PARA 32. As to advowsons see **ECCLESIASTICAL LAW** vol 14 PARA 776.

3 *Prestney v Colchester Corpn and A-G* (1882) 21 ChD 111 at 119-120 per Hall V-C (action by some freemen of a borough, on behalf of all, to establish a right for the benefit of all the freemen, suing under powers conferred by the Municipal Corporations Act 1835 s 2 (repealed)); cf *A-G v Meyrick* [1893] AC 1, HL (where the Act did not contain similar provisions and the Attorney General was a party).

4 *A-G v Warren* (1818) 2 Swan 291 at 311 per Plumer MR; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769. See also *Rendall v Blair* (1890) 45 ChD 139, CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(ii) The Attorney General as a Party/604. Parties bound by proceedings.

604. Parties bound by proceedings.

All beneficiaries are bound by the result of proceedings to which the Attorney General is a party¹, but the Attorney General is not bound by any proceedings taken by beneficiaries to which he is not made a party².

1 *Vince v Walsh* (1854) 3 WR 7.

2 *A-G v Leage* (1881) Tudor on Charities (4th Edn, 1906) 1041 at p 1044 per Kay J, discussing *Saunders v Howes* (1857) cited in Tudor on Charities (4th Edn, 1906) p 1043.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(ii) The Attorney General as a Party/605. Payment into court by trustees.

605. Payment into court by trustees.

If a trustee pays money or securities into court¹, unless the court orders otherwise, he must immediately serve notice of the payment into court on every person interested in or entitled to the money or securities². This includes the Attorney General who has an interest in the funds as representing the public³. The payment into court discharges the trustees, and all future applications in regard to the fund so paid in must be made by the Attorney General only⁴.

1 See the Trustee Act 1925 s 63; and **TRUSTS** vol 48 (2007 Reissue) PARA 917 et seq.

2 *Practice Direction--Miscellaneous Provisions about Payments into Court* PD 37 para 6.3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 742.

3 *Re Poplar and Blackwall Free School* (1878) 8 ChD 543 at 546 per Jessel MR.

4 *Re Poplar and Blackwall Free School* (1878) 8 ChD 543.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(ii) The Attorney General as a Party/606. Appeal by Attorney General.

606. Appeal by Attorney General.

With the permission of the Court of Appeal, the Attorney General may appeal against a decision in proceedings to which he was not a party in the court of first instance¹. However, after a decree which he did not oppose in proceedings to which he was a party he should not reopen the discussion by an appeal, although the court will not dismiss the appeal on that ground alone².

1 *Re Faraker, Faraker v Durell* [1912] 2 Ch 488, CA.

2 *Christ's Hospital v Grainger* (1849) 19 LJCh 33 at 36 per Lord Cottenham LC.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(iii) The Relator/607. Introduction of relator.

(iii) The Relator

607. Introduction of relator.

The introduction of a relator in claims relating to charities is not essential¹. The Attorney General may, if he pleases, take proceedings without a relator², or may require one to be introduced even in cases certified by the Charity Commission³, the object being to have before the court a person who may be made liable for any costs which may be awarded against the Crown⁴. In connection with the award of costs, the Crown is not deemed to be a party to proceedings by reason only that the proceedings are brought by the Attorney General on the relation of some other person⁵.

Relator proceedings are now rare in practice.

1 *Mucklow v A-G* (1816) 4 Dow 1 at 15 per Lord Redesdale; *Re Masters, Governors and Trustees of the Bedford Charity* (1819) 2 Swan 470 at 520 per Lord Eldon LC; *A-G v Dublin Corp'n* (1827) 1 Bli NS 312 at 351, HL, per Lord Redesdale.

2 *A-G v Logan* [1891] 2 QB 100 at 107, DC, per Williams J; *A-G v Lewis* (1845) 8 Beav 179.

3 *A-G v Boucherett* (1858) 25 Beav 116. As to the Charity Commission see PARAS 538-572.

4 *Shelford's Law of Mortmain* (1836) 424, 425; *A-G v Brown* (1818) 1 Swan 265 at 305 per Lord Eldon LC; *Re Masters, Governors and Trustees of the Bedford Charity* (1819) 2 Swan 470; *A-G v Dublin Corp'n* (1827) 1 Bli NS 312 at 351-352, HL, per Lord Redesdale; *A-G v Boucherett* (1858) 25 Beav 116 at 120 per Romilly MR; *A-G v Logan* [1891] 2 QB 100 at 106 per Vaughan Williams J: the practice of making the relator directly responsible for the costs of the action had its origin not in the protection of the defendant but of the Crown. However, see *Ludlow Corp'n v Greenhouse* (1827) 1 Bli NS 17 at 48, HL, where Lord Redesdale suggests that a relator was joined in the interests of the defendant. See PARA 617.

5 See the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(2); and **CIVIL PROCEDURE** vol 11 (2009) PARA 409. This provision is not affected by the Crown Proceedings Act 1947: see s 23(3)(a); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 116. See further PARA 617.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(iii) The Relator/608. Who may be relators.

608. Who may be relators.

The following persons and bodies may act as relators¹: any private individual who thinks that a charity has been abused², several individuals³, the trustees of the charities concerned or any of them⁴, corporations⁵, companies⁶, district councils⁷, local education authorities⁸, and ratepayers⁹. A relator need not have any interest in the charity, its administration, or the subject of the suit¹⁰, but he must not be a person in indigent circumstances¹¹.

The restrictions on the bringing of charity proceedings¹² do not apply to the taking of such proceedings by the Attorney General with a relator¹³.

1 Relator proceedings are now rare in practice.

2 Shelford's Law of Mortmain (1836) 424.

3 *A-G v Earl of Clarendon* (1810) 17 Ves 491 (several inhabitants).

4 *A-G v Griffith* (1807) 13 Ves 565 at 571, citing *A-G v Talbot* (circa 1800, unreported).

5 *A-G v Logan* [1891] 2 QB 100 at 104 per Wills J; *A-G v Ashborne Recreation Ground Co* [1903] 1 Ch 101. As to corporations generally see **CORPORATIONS**.

6 *A-G v Merthyr Tydfil Union* [1900] 1 Ch 516, CA. As to companies generally see **COMPANIES**.

7 *A-G v Wimbledon House Estate Co Ltd* [1904] 2 Ch 34. As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

8 *A-G v Price* (1908) 72 JP 208.

9 *LCC v A-G* [1902] AC 165, HL.

10 *A-G v Bucknall* (1742) 2 Atk 328; *A-G v Green* (1789) 2 Bro CC 492 at 497; *A-G v Vivian* (1826) 1 Russ 226 at 236 per Lord Gifford MR. See also *Southmolton Corp v A-G* (1854) 5 HL Cas 1 at 27 per Lord Cranworth LC (where the court appeared to look with disfavour upon a relator who was a complete stranger to the charity). A paragraph in the statement of claim indicating the relator's interest has been held not irrelevant: *A-G v Rickards* (1843) 6 Beav 444; affd (1844) 1 Ph 383; on appeal, sub nom *Rickards v A-G* (1845) 12 Cl & Fin 30, HL.

11 *Fellows v Barrett* (1836) 1 Keen 119 at 120 per Lord Langdale MR. This is because he is liable for costs: see PARA 621. A solicitor's certificate of the relator's fitness to act and ability to pay costs is necessary.

12 See PARA 586 et seq.

13 See the Charities Act 1993 s 33(6); and PARA 587. The Attorney General may take such proceedings without a relator: s 33(6) (amended by the Charities Act 2006 s 75(1), Sch 8 paras 96, 125(1), (4)).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(iii) The Relator/609. Relator and Attorney General.

609. Relator and Attorney General.

The introduction of a relator's name does not make him a claimant¹, except where he is personally interested in the relief sought², and then he may be a co-claimant in his personal capacity. The Crown, acting through the Attorney General, is the real claimant³.

A relator's claim is the claim of the Attorney General, and therefore the relator cannot appear separately⁴, or take an opposite view⁵ from the Attorney General; nor, when a relator is claimant, can he be heard in person on behalf of the Attorney General⁶.

Under the Rules of the Supreme Court, it was the practice that before a person's name was used as a relator he was required to give a written authorisation, which had to be filed⁷. Before the claim form is issued the Attorney General's fiat must be obtained, and for this purpose counsel must certify that the proceedings are proper to be begun by the Attorney General⁸.

The Attorney General may appear either in person or by counsel⁹, or he may authorise the relator to conduct the case and instruct counsel on his behalf. The Attorney General cannot then appear independently¹⁰ except by the court's special permission¹¹.

1 *A-G v Logan* [1891] 2 QB 100 at 106 per Williams J. Relator proceedings are now rare in practice.

2 *A-G v Heelis* (1824) 2 Sim & St 67; *A-G v Vivian* (1826) 1 Russ 226 at 236 per Lord Gifford MR; *Lang v Purves* (1862) 15 Moo PCC 389. Under the old practice, where the relator joined as plaintiff, the proceeding was called 'a bill and information'.

3 *A-G v Logan* [1891] 2 QB 100.

4 *A-G v Ironmongers' Co* (1840) 2 Beav 313 at 328 per Lord Langdale MR.

5 *A-G v Governors etc of Sherborne Grammar School* (1854) 18 Beav 256. However, in *Shore v Wilson* (1842) 9 Cl & Fin 355 at 475, HL, the Attorney General appeared for the defendants in an action by the Attorney with a relator.

6 *A-G v Barker* (1838) 4 My & Cr 262.

7 See RSC Ord 15 r 11 (revoked).

8 As to costs see PARA 620. Cf *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL.

9 *A-G v Green* (1820) 1 Jac & W 303 at 305 per Lord Eldon LC; *Ludlow Corp'n v Greenhouse* (1827) 1 Bli NS 17 at 65, HL, per Lord Redesdale.

10 *A-G v Governors etc of Sherborne Grammar School* (1854) 18 Beav 256 at 264 per Romilly MR. See also *A-G v Dove* (1823) Turn & R 328; *A-G v Barker* (1838) 4 My & Cr 262; *A-G v Ironmongers' Co* (1840) 2 Beav 313.

11 *A-G v Dove* (1823) Turn & R 328; *A-G v Earl of Stamford* (1843) 10 LJCh 58 at 66 per Lord Cottenham LC. See also *Re Hanson's Trust* (1852) 9 Hare, App I, liv; Seton's Judgments and Orders (7th Edn, 1912) 1246. See also PARA 619.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(iii) The Relator/610. Death of relator.

610. Death of relator.

Where there are several relators the death of one does not affect the proceedings, but if all die, or if the sole relator dies¹ or becomes mentally disordered², the court will stay the proceedings until a new relator is appointed, in order that some person may be made answerable for costs³.

The Attorney General's consent is required before an order appointing a new relator can be obtained⁴, or the Attorney General must make the application himself⁵.

1 *A-G v Powel* (1763) 1 Dick 355; *A-G v Haberdashers' Co* (1852) 15 Beav 397 at 404 per Romilly MR. Relator proceedings are now rare in practice.

2 *A-G v Tyler* (1764) 2 Eden 230.

3 *A-G v Smart* (1748) 1 Ves Sen 72.

4 *Anon* (1726) Cas temp King 69.

5 *A-G v Plumtree* (1820) 5 Madd 452.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(iv) Other Persons as Parties/611. Persons interested and strangers.

(iv) Other Persons as Parties

611. Persons interested and strangers.

Apart from the statutory restriction on the persons who may take proceedings in relation to the administration of a charity¹, all persons interested² in the subject of the claim ought, generally speaking, to be parties, if they are within the jurisdiction of the court³.

In a claim to establish a charity rentcharge it is not necessary for all the persons whose estates may be liable to be joined as parties; the court will decide whether the rentcharge in question is charged on the estate of the person actually before the court⁴.

It depends upon the circumstances in each case whether persons who have a contingent interest in a charitable fund should be made parties to any proceedings concerning it⁵.

Where the Attorney General appears on behalf of a charity the court may allow the trustees to argue in support of the Attorney General⁶, and it will hear the trustees when, in good faith, they differ from the relators⁷.

Strangers to a charitable trust who are not joined as relators⁸ are not proper parties to any legal proceedings relating to it⁹; as for example the original subscribers to a charitable fund¹⁰, or an agent employed by charity trustees to manage the affairs of the charity¹¹.

Persons showing an apparent right of intervention in legal proceedings to which they are not parties may be allowed by the court to attend¹². Again, if any necessary parties are omitted or unnecessary parties are added, the court upon application will usually allow the proper alterations to be made¹³.

1 See the Charities Act 1993 s 33(1); and PARA 587.

2 This does not include persons who merely conceive themselves to be interested in establishing the validity of the trust: *Practice Note* [1945] WN 38; cf *Re Belling, Enfield London Borough Council v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105.

3 Persons who may be interested parties include: purchasers, where land subject to a charge in favour of charity was alleged to have been improperly sold (*Southmolton Corp v A-G* (1854) 5 HL Cas 1); executors, where a legacy charged on land was given to a charity and an action to ascertain the profits of the lands was instituted (*A-G v Twisden* (1678) Cas temp Finch 336); one tenant in common of lands, where a charity was claiming against the other tenant in common (*A-G v Flint* (1844) 4 Hare 147); the heir-at-law, where the

proceedings were to decide whether surplus funds belonged to him or to a charity (*A-G v Haberdashers' Co* (1792) 4 Bro CC 103 at 106; *Ludlow Corp'n v Greenhouse* (1827) 1 Bli NS 17 at 55, HL, per Lord Redesdale), or whether there was a resulting trust for his benefit (*A-G v Green* (1789) 2 Bro CC 492), or where he was by implication visitor of a charity and an action was instituted for the execution of the trusts (*A-G v Gaunt* (1790) 3 Swan 148n); a schoolmaster, where the action was to have surplus charity funds applied for his benefit (*A-G v Smart* (1748) 1 Ves Sen 72); lessees, underlessees and assignees of charity lands in an action to set aside the lease (*A-G v Backhouse* (1810) 17 Ves 283 at 285; *Ludlow Corp'n v Greenhouse* at 73 per Lord Redesdale; *A-G v Greenhill* (1863) 33 Beav 193. See also *A-G v Pretymen* (1845) 8 Beav 316, where a lessee, though not made a party, was given leave to attend). Where certain parishioners, on behalf of themselves and others, claiming to be interested in certain charities, applied to the court to be served with notice of all proceedings in the matter and for liberty to attend an inquiry, their application was refused on the ground that the public was already represented by the Attorney General: *Ironmongers' Co v Roberts* (1909) Times, 24 June.

4 *A-G v Jackson* (1805) 11 Ves 365 at 367, 372 per Lord Eldon LC; *A-G v Naylor* (1863) 1 Hem & M 809. It is otherwise where the rentcharge is not charitable: *A-G v Jackson* at 367 per Lord Eldon LC.

5 *A-G v St John's College* (1835) 7 Sim 241 (where the information was held defective for want of parties because the person who was entitled to appoint the master of a charity school if he was not appointed by other persons within a limited period was not joined as party); *A-G v Goddard* (1823) Turn & R 348 (where trustees of a charity who had a contingent interest in a legacy given to another charity were held not to be necessary parties to a suit establishing the second charity).

6 *Solicitor-General v Bath Corp'n* (1849) 18 LJCh 275 at 276 per Wigram V-C; *Whicker v Hume* (1851) 14 Beav 509 at 528 per Romilly MR; affd (1858) 7 HL Cas 124.

7 *Solicitor-General v Bath Corp'n* (1849) 18 LJCh 275 at 277 per Wigram V-C. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

8 See PARAS 607-610.

9 *Lang v Purves* (1862) 15 Moo PCC 389.

10 *A-G v Gardner* (1848) 2 De G & Sm 102; *A-G v Munro* (1848) 2 De G & Sm 122 at 161-162 per Shadwell V-C. However, see *Minn v Stant* (1851) 15 Beav 49, where the original subscribers were in special circumstances held still to have an interest, and were joined as parties.

11 *A-G v Earl of Chesterfield* (1854) 18 Beav 596. As regards actions by some agents against others see also *Strickland v Weldon* (1885) 28 ChD 426.

12 *A-G v Shore* (1836) 1 My & Cr 394; *A-G v Pretymen* (1845) 8 Beav 316; *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324; and see PARA 614. See also *Royal Society for the Prevention of Cruelty to Animals v A-G* (2001) Times, 13 February.

13 See CPR 19.2; and **CIVIL PROCEDURE** vol 11 (2009) PARA 213. See also *Re Church Patronage Trust, Laurie v A-G* [1904] 1 Ch 41; affd on another point [1904] 2 Ch 643. CA.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(3) CLAIMS AND OTHER PROCEEDINGS/(iv) Other Persons as Parties/612. Proceedings against trustees.

612. Proceedings against trustees.

Where proceedings are taken against charity trustees, all must be joined, and not only the acting trustees¹; but in a claim to remedy a breach of trust it is not necessary to make every person participating in the breach party to the suit².

New trustees appointed during the course of proceedings who ought to be, but are not, parties to proceedings for the administration of a charity are not so bound by a decree made in such proceedings as to be absolutely precluded from making a case by way of defence to the suit³.

1 *Re Chertsey Market, ex p Walthew* (1819) 6 Price 261.

2 *A-G v Leicester Corpn* (1844) 7 Beav 176. See the following cases of *McCheane v Gyles (No 2)* [1902] 1 Ch 911, where a claim was brought by a beneficiary against one of two trustees liable for breach of trust, and *Ideal Films Ltd v Richards* [1927] 1 KB 374, CA, neither of which involved charities. See also CPR 19.6 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 229), which provides that where more than one person has the same interest in a claim, the claim may be begun or the court may order that the claim be continued, by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

3 *A-G v Foster* (1842) 2 Hare 81.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(4) PROCEDURE RELATING TO SCHEMES/613. Drafting and settling schemes.

(4) PROCEDURE RELATING TO SCHEMES

613. Drafting and settling schemes.

In many non-contentious cases schemes are settled by the Charity Commission¹, either on an application to them for the purpose² or on a reference by the court³. Otherwise, where the court directs a scheme to be settled, the matter is generally referred to a master and settled in private before the judge⁴; the scheme settled by the judge is scheduled to the order approving it. In simple cases, where a slight modification of a trust is required⁵ or where the fund is small⁶, a reference to the master may be dispensed with and the scheme set out in the order⁷. Sometimes a reference to the master is directed to apportion a fund without settling a scheme⁸.

When a scheme is directed to be settled, the draft may be prepared by the Attorney General⁹, or by other applicants, who would usually be the trustees of the charity¹⁰. If the draft is not prepared by the Attorney General it must be submitted to the Treasury Solicitor¹¹ for the Attorney General's approval. The draft scheme is brought before the judge in private for approval¹². If there are any points objected to, the summons may be adjourned into court¹³.

The Attorney General, whose presence at the settlement of a scheme is generally¹⁴, but not invariably¹⁵, required, should be served with a summons to attend¹⁶, and he may then raise any objections¹⁷.

1 As to the Charity Commission see PARAS 538-572.

2 See under the Charities Act 1993 s 16(1): see PARA 187.

3 See under the Charities Act 1993 s 16(2): see PARA 189.

4 *Wellbeloved v Jones* (1822) 1 Sim & St 40; and see *Doyley v Doyley* (1735) 7 Ves 58n; *Baylis v A-G* (1741) 2 Atk 239 at 240n per Lord Hardwicke LC; *Paice v Archbishop of Canterbury* (1807) 14 Ves 364 at 372 per Lord Eldon LC; *Waldo v Caley* (1809) 16 Ves 206 at 211 per Grant MR; *Re Hanson's Trust* (1852) 9 Hare, App I, liv. In practice, it is only in some cases that the court directs the scheme be settled by the master: where the scheme is either very short or particularly contentious the judge may make the scheme.

5 *Re Richardson's Will* (1887) 58 LT 45.

6 *Re Lousada, Bacon v Bacon* (1887) 82 LT Jo 358.

7 *A-G v Brandreth* (1842) 1 Y & C Ch Cas 200; *Clum Hospital Warden and Brethren v Lord Powys* (1842) 6 Jur 252; *Re Delmar Charitable Trust* [1897] 2 Ch 163 at 168 per Strirling J. See also *Gillan v Gillan* (1878) 1 LR Ir 114; *A-G v Earl of Mansfield, ex p Wardens and Governors of Highgate Free Grammar School* (1845) 14 Sim 601.

8 *White v White* (1778) 1 Bro CC 12 at 15 per Lord Thurlow LC; *Re Hyde's Trusts* (1873) 22 WR 69.

- 9 *Smith v Kerr (No 2)* (1905) 74 LJCh 763 at 767 per Farwell J.
- 10 *A-G v Stepney* (1804) 10 Ves 22 at 29 per Lord Eldon LC; *Jemmit v Verril* (1826) Amb 585n; and cf *Re Lea, Lea v Cooke* (1887) 34 ChD 528 at 533 per North J.
- 11 As to the Treasury Solicitor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 541.
- 12 *Re Wyersdale School* (1853) 10 Hare, App II, lxxiv.
- 13 *Re Wyersdale School* (1853) 10 Hare, App II, lxxiv.
- 14 *Re Hanson's Trust* (1852) 9 Hare, App I, liv; *A-G v Goldsmiths' Co* (1833) Coop Pr Cas 292 at 312 per Leach MR; *A-G v Earl of Stamford* (1843) 1 Ph 737 at 739; *A-G v St Cross Hospital* (1854) 18 Beav 475; *Re Clergy Society* (1856) 2 K & J 615; *Re Taylor, Martin v Freeman* (1888) 58 LT 538.
- 15 Eg where the fund is small: *A-G v Haberdashers' Co* (1835) 2 My & K 817 (fund of £1,100).
- 16 *Re Hanson's Trust* (1852) 9 Hare, App I, liv.
- 17 *Re Lea, Lea v Cooke* (1887) 34 ChD 528.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(4) PROCEDURE RELATING TO SCHEMES/614. Attendance on settlement of scheme.

614. Attendance on settlement of scheme.

As the Attorney General attends the settlement of a scheme to protect the interests of all concerned in the charity, the court may refuse to allow the attendance of interested persons, even at their own expense¹. As a rule strangers to the suit are not allowed to intervene or to attend the settlement of a scheme², unless their intervention or attendance will clearly be beneficial to the charity³, or it is necessary, for the purpose of deciding a particular point, that someone should be allowed to intervene for the purpose of arguing a particular contention⁴. Permission to attend may be given to persons who are not parties, on the understanding that only one set of costs will be allowed⁵, or that they do so at their own expense⁶. However, the Attorney General is always ready to listen to any suggestion made by persons who have any real interest in the matter⁷.

- 1 *A-G v St Cross Hospital* (1854) 18 Beav 475; *A-G v Wimborne School* (1847) 10 Beav 209 (Ecclesiastical Commissioners refused leave to attend); *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324 at 334-335 per Lord Cottenham LC; *Re Sekeford's Charity* (1861) 5 LT 488.
- 2 *A-G v Attwood* (1852) 1 WR 64 at 91; *Smith v Kerr (No 2)* (1905) 74 LJCh 763 at 767 per Farwell J. See also the cases cited in note 1.
- 3 *Smith v Kerr (No 2)* (1905) 74 LJCh 763 at 767 per Farwell J.
- 4 *Re Hyde Park Place Charity* [1911] 1 Ch 678, CA.
- 5 *A-G v Shore* (1836) 1 My & Cr 394.
- 6 *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324 at 335 per Lord Cottenham LC.
- 7 *Smith v Kerr (No 2)* (1905) 74 LJCh 763. See also *Royal Society for the Prevention of Cruelty to Animals v A-G* (2001) Times, 13 February.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(4) PROCEDURE RELATING TO SCHEMES/615. Opposition by new trustee.

615. Opposition by new trustee.

On an application for an order approving a scheme for the administration of a charity estate, a newly appointed trustee who has not been served with the proceedings may oppose the application on grounds not appearing upon the report or brought before the master¹.

¹ *Re Loppington Parish* (1850) 8 Hare 198.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(5) PROCEDURE ON APPLICATIONS AND APPEALS/616. Applications.

(5) PROCEDURE ON APPLICATIONS AND APPEALS

616. Applications.

Where it is necessary to obtain the authority or certificate of the Charity Commission¹ to take charity proceedings², and the authority or certificate or permission is refused³, the leave of one of the judges of the High Court attached to the Chancery Division may instead be obtained⁴.

Application for permission to take charity proceedings⁵ must be made within 21 days after the refusal by the Commission of an order authorising proceedings⁶. The application must be made by issuing a Part 8 claim form, which must contain the following information⁷:

- 540 (1) the name, address and description of the applicant;
- 541 (2) details of the proceedings which he wishes to take;
- 542 (3) the date of the Commission's refusal to grant an order authorising the taking of proceedings;
- 543 (4) the grounds on which the applicant alleges that it is a proper case for taking proceedings; and
- 544 (5) if the application is made with the consent of any other party to the proposed proceedings, that fact⁸.

If the Commission has given reasons for refusing to grant an order, a copy of its reasons must be filed with the claim form⁹. The Commission must be made defendant to the claim, but the claim form need not be served on it or on any other person¹⁰. If the judge on considering the application so directs, the Commission must file a written statement of its reasons for its decision¹¹, and the court will serve on the applicant a copy of any statement so filed¹². The judge may either give permission without a hearing or fix a hearing¹³.

Application for permission to appeal a decision of the Tribunal must be made according to the standard rules for appeals¹⁴.

¹ As to the Charity Commission see PARAS 538-572.

² As to what are charity proceedings, and when the Charity Commission's authority or the permission of a judge is required, see PARAS 586, 588.

³ The authority or certificate must first have been applied for and refused: see the Charities Act 1993 s 33(5); *Khaira v Grewal* [2005] EWHC 1413 (Ch), [2005] All ER (D) 336 (Feb); and PARA 588.

- 4 See the Charities Act 1993 s 33(5); and PARA 588.
- 5 le under the Charities Act 1993 s 33(5): see PARA 588.
- 6 CPR 64.6(1). CPR 64.6(1) refers to the Charity Commissioners rather than the Charity Commission; however, this has effect as if it were a reference to the Charity Commission for England and Wales: see the Charities Act 2006 s 6(5); and PARA 538. As to the Charity Commission see PARAS 538-572.
- 7 CPR 64.6(2). As to claims under CPR Pt 8 see **CIVIL PROCEDURE** vol 11 (2009) PARA 127 et seq.
- 8 *Practice Direction--Estates, Trusts and Charities* PD 64 para 9.1.
- 9 *Practice Direction--Estates, Trusts and Charities* PD 64 para 9.2.
- 10 CPR 64.6(3).
- 11 CPR 64.6(4).
- 12 CPR 64.6(5).
- 13 CPR 64.6(6).
- 14 le CPR Pt 52: see **CIVIL PROCEDURE** vol 12 (2009) PARA 1660 et seq.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(i) The Attorney General/617. Discretion as to costs.

(6) COSTS

(i) The Attorney General

617. Discretion as to costs.

In any civil proceedings to which the Crown is a party the costs of the proceedings are in the discretion of the court. The court must exercise this discretion in the same manner and on the same principles as in cases between subjects, and may order the payment of costs by or to the Crown accordingly¹. Where the Attorney General as such is required to be made a party, the court must have regard to the nature of the proceedings and the character and circumstances in which the Attorney General appears and, in the exercise of its discretion, may order any other party to pay the Attorney General's costs whatever the result of the proceedings may be²; but the Crown is not deemed to be a party by reason only that the proceedings are by the Attorney General on the relation of some other person³.

The Attorney General, it was formerly said, never pays costs when he sues as an officer of the Crown in the performance of a public duty, for example on behalf of a charity, even when he loses his case⁴. It is not clear whether this rule has survived the statutory provisions described above⁵.

Where the Attorney General brings a claim for an injunction on behalf of the Crown as *parens patriae* he will not normally be required to give the usual cross-undertaking⁶. However, if the Crown is asserting proprietary rights and seeking to recover property alleged to belong to or to be owed to the charity, the court may think it right to give the defendant the benefit of a cross-undertaking if possible⁷.

The court has a very wide discretionary jurisdiction to determine allocation of costs⁸.

- 1 See the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(1); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 136.
- 2 See the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(1) proviso (a); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 136.
- 3 See the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(2); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 136. It seems that the Act does not affect the practice as to costs in charity proceedings: cf *A-G v Dean and Canons of Windsor* (1860) 8 HL Cas 369 at 459.
- 4 Shelford's Law of Mortmain (1836) 474; *A-G v Earl of Ashburnham* (1823) 1 Sim & St 394 at 397 per Leach V-C; *A-G v Dublin Corp* (1827) 1 Bli NS 312 at 351-352, HL, per Lord Redesdale; *Ludlow Corp v Greenhouse* (1827) 1 Bli NS 17 at 48, HL, per Lord Redesdale; *A-G v Chester Corp* (1851) 14 Beav 338; *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 475, CA, per Rigby LJ. As to the general principle said to apply in courts of common law that 'the Crown neither receives nor pays costs' see also *A-G v London Corp* (1850) 2 Mac & G 247 at 271 per Lord Cottenham LC; *R v Archbishop of Canterbury* [1902] 2 KB 503 at 572 per Wright J; *Thomas v Pritchard* [1903] 1 KB 209 at 215 per Lord Alverstone CJ; *Sanderson v Blyth Theatre Co* [1903] 2 KB 533 at 542, CA, per Stirling LJ; *Re Cardwell, A-G v Day* [1912] 1 Ch 779. As to the payment of costs by the Crown generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 392; **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 136.
- 5 See the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(1); see the text and notes 1-2; and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 136. See Tudor on Charities (9th Edn, 2003) pp 402-403.
- 6 *A-G v Wright* [1987] 3 All ER 579, [1988] 1 WLR 164; *F Hoffmann-La Roche & Co A-G v Secretary of State for Trade and Industry* [1975] AC 295, [1974] 2 All ER 1128, HL. See **CIVIL PROCEDURE** vol 11 (2009) PARAS 419-423.
- 7 There may be a difficulty about requiring an undertaking from the Attorney General since he does not have any right ex officio to resort to the charity funds for reimbursement. In *A-G v Wright* [1987] 3 All ER 579, [1988] 1 WLR 164, where the matter arose, a receiver of the charity had been appointed who would have such a right and the injunction was granted to the Attorney General conditional on the giving of a cross-undertaking by the receiver limited, however, to what he could recover by way of indemnity from the charity.
- 8 See *Aiden Shipping Co Ltd v Interbulk Ltd, The Vimeira* [1986] AC 965, [1986] 2 All ER 409, HL.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(i) The Attorney General/618. When Attorney General receives costs.

618. When Attorney General receives costs.

As a rule in charity cases the Attorney General is entitled to receive costs which would have been awarded to him as a private litigant; but he is not entitled to receive costs in proceedings brought by him where, if he had brought them as a private individual, he could have been called upon to pay them¹.

Where the court sanctions an application to Parliament to effect certain changes in the constitution of a charity, the Attorney General's costs are allowed out of the charity estate, even if the application fails². Costs may also be given to him in interim applications made independently of the relator³.

If a defendant who has been ordered to pay the Attorney General's costs becomes insolvent, the costs may be ordered to be paid out of the charity estate⁴.

In administration actions where the Attorney General is joined as the guardian of a charitable, or supposed charitable, legacy, he is usually given his costs on the standard basis⁵ out of the estate⁶, even if the proceedings are unsuccessful so far as the charity is concerned⁷.

When the Attorney General takes proceedings as a result of information given to him by the Charity Commission⁸, he is entitled to be put in the same position as any other claimant with regard to costs, and to have his costs out of the fund⁹.

1 *A-G v London Corp* (1850) 2 Mac & G 247 at 269 per Lord Cottenham LC; but see *Re Cardwell, A-G v Day* [1912] 1 Ch 779. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *Re Bedford Charity* (1857) 26 LJCh 613.

3 *A-G v Earl of Ashburnham* (1823) 1 Sim & St 394. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

4 *A-G v Lewis* (1845) 8 Beav 179.

5 Previously the common fund basis. As to the basis of assessment now see CPR 44.4; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

6 See eg *Mills v Farmer* (1815) 19 Ves 483 at 490 per Lord Eldon LC; and *Re Preston's Estate, Raby v Port of Hull Society's Sailors' Orphans' Homes* [1951] Ch 878 at 881, [1951] 2 All ER 421 at 423 per Vaisey J; *Re Amory, Westminster Bank Ltd v British Sailors' Society Inc at Home and Abroad* [1951] 2 All ER 947n. See also *Hunter v A-G* [1899] AC 309 at 325, HL, per Earl of Halsbury LC, where the Attorney General attempted unsuccessfully to support a judgment of the Court of Appeal in his favour, and the court intimated that, if the estate had not been large, costs would not necessarily have been given to the Attorney General. See also *Construction Industry Training Board v A-G* [1973] Ch 173, [1972] 2 All ER 1339, CA (appeal by Attorney General dismissed with costs).

7 *Moggridge v Thackwell* (1803) 7 Ves 36 at 88 per Lord Eldon LC; *A-G v Earl of Ashburnham* (1823) 1 Sim & St 394 at 396 per Leach V-C.

8 *Ie* under the Charities Act 1993 s 33(7); see PARA 593. As to the Charity Commission see PARAS 538-572.

9 *Cf Re Cardwell, A-G v Day* [1912] 1 Ch 779.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(i) The Attorney General/619. Costs allowed.

619. Costs allowed.

Where the Attorney General takes proceedings at the instance of relators¹, he is not allowed the costs of attending separately by his own solicitor²; but if there is a suspicion of collusion between the relators and the defendant, for example where the same solicitor appears for both, application ought to be made for permission of the court for the Attorney General to appear separately³.

Even when the Attorney General does not appear personally at the hearing of proceedings instituted by him, the costs of his brief should be allowed upon detailed assessment, on the ground that the Attorney General's duty is distinct from the mere duty and responsibility of counsel attending at the hearing to argue the cause⁴.

Costs of particular proceedings taken and abandoned by the Attorney General in the course of an ex officio claim may be excepted from the general costs of the claim⁵.

It has been held that costs of persons who, on public grounds, give advice to the Attorney General to secure the appointment of fit persons as charity trustees, are not allowed out of the charity funds⁶.

1 This does not of itself make the Crown a party to the proceedings so as to give the court discretion to order costs as between subjects: see the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(2); and

CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 136. As to relators see further PARA 539 et seq. Relator proceedings are now rare in practice.

2 *A-G v Dove* (1823) Turn & R 328.

3 *A-G v Wyggeston Hospital* (1855) Seton's Judgments and Orders (6th Edn, 1901) 1290; *A-G v Dove* (1823) Turn & R 328. The court has a very wide discretion to determine allocation of costs: see PARA 617.

4 *A-G v Drapers' Co* (1841) 4 Beav 305; and see *Cockburn v Raphael* (1843) 12 LJCh 263.

5 *A-G v Ward* (1848) 11 Beav 203 at 208 per Lord Langdale MR.

6 *Re Gloucester Charities* (1853) 10 Hare, App I, iii, where prior to the appointment by the court of new trustees of a charity under the Municipal Corporations Act 1835 s 71 (repealed: see now the Municipal Corporations Act 1882 s 133), a public notice was issued inviting parties to lay before the Attorney General any objections or suggestions with reference to the proposed appointments.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(i) The Attorney General/620. Costs of application for fiat.

620. Costs of application for fiat.

The costs of obtaining the Attorney General's fiat before taking proceedings requiring it, such as a relator action¹, and the costs of proceedings before the Attorney General with reference to the withdrawal of his fiat pending an appeal, may be made costs in the claim².

Where an application is made to the Attorney General without the direction or sanction of the court, the court has no jurisdiction to order payment of the costs occasioned by it³.

1 See PARA 609. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

2 *A-G v Halifax Corp'n* (1871) LR 12 Eq 262. The court has a very wide discretion to determine allocation of costs: see PARA 617.

3 *A-G v Harper* (1838) 8 LJCh 12, where certain persons, who were purchasers in good faith of an improvident lease of charity lands, presented a memorial to the Attorney General praying that the matter might be referred to the master to approve a proper lease.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(ii) The Relator/621. Relator's liability for costs.

(ii) The Relator

621. Relator's liability for costs.

As the relator is answerable for costs, he should be a person of substance¹. He may be directed to give security for costs², but this is not done where he sues as claimant as well as relator³.

When proceedings are unnecessary⁴, or are instituted from improper motives, such as private revenge⁵, or where wrong parties are joined⁶, the court may order the relator to pay costs, or such part as is occasioned by his misconduct.

1 *A-G v Knight* (1837) 3 My & Cr 154. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *A-G v Rochester Corpn* (1680) Shelford's Law of Mortmain (1836) 425.

3 *A-G v Knight* (1837) 3 My & Cr 154.

4 *A-G v Glegg* (1738) Amb 584 (where the relators were charged with costs on the dismissal of an information which sought specific performance of an agreement between three executors, trustees of a charity, giving each a right to nominate to a third part of the charity funds absolutely); *A-G v Parker* (1747) 3 Atk 576; *A-G v Smart* (1748) 1 Ves Sen 72 (information in contradiction to the charity rights as established by its charter); *A-G v Hartley* (1820) 2 Jac & W 353 at 370 per Lord Eldon LC (where an information was filed involving most expensive inquiries, containing gross imputations on the conduct of individuals and allegations not proved, upon which no relief was or could be given); *A-G v Earl of Mansfield* (1827) 2 Russ 501 at 538 per Lord Eldon LC (information containing unfounded charges against officers of a charity). See also *Southmolton Corpn v A-G* (1854) 5 HL Cas 1 at 39 per Lord St Leonards.

5 *A-G v Middleton* (1751) 2 Ves Sen 327 at 330 per Lord Hardwicke LC; *A-G v Bosanquet* (1841) 11 LJCh 43.

6 *A-G v Berry* (1847) 11 Jur 114.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(ii) The Relator/622. When costs denied to relator.

622. When costs denied to relator.

Where a relator totally fails in substantiating the case, no costs can be given to him; the utmost he can then claim is to be discharged without costs¹. This rule is applied where a relator acts in good faith but in error with a view to protecting a charity², or with similar motives seeks to divert charitable funds to purposes not contemplated by the trust³. Even if his application is partially successful, the relator may not obtain his costs where the proceedings have been conducted with unnecessary expense⁴.

1 *A-G v Oglander* (1790) 1 Ves 246. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *A-G v Bolton* (1796) 3 Anst 820; and see *A-G v Bosanquet* (1841) 11 LJCh 43.

3 *A-G v Braithwaite* (1885) 2 TLR 56, CA.

4 *A-G v Cullum* (1836) 1 Keen 104, where no costs up to the hearing were given to the relators.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(ii) The Relator/623. Costs given to relator.

623. Costs given to relator.

Where there is nothing to impeach the propriety of the proceedings and no special circumstances to justify a special order, the relator in charity proceedings which terminate successfully is entitled to his costs on the standard basis¹, and to be paid out of the charity estate the difference between the amount of those costs and the amount recovered from the defendant². In special circumstances a relator may also be given his charges and expenses³. Again, even though costs may be refused him, he may be allowed money actually expended by him although without the sanction of the master, if in the result the expenditure has been of use to the charity⁴.

A relator who, with the Attorney General's consent, proceeds by action when the relief desired might otherwise have been obtained, may be allowed his costs⁵. So also may costs be given to a relator who is changed before the hearing of the proceedings⁶, or to a relator who acts in error but with the intention in good faith of benefiting the charity⁷.

1 See PARA 618 note 5.

2 *A-G v Berwick-upon-Tweed Corp* (1829) Taml 239; *A-G v Kerr* (1841) 4 Beav 297. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice. The court has a very wide discretion to determine allocation of costs: see PARA 617.

3 *A-G v Kerr* (1841) 4 Beav 297 at 303 per Lord Langdale MR; *A-G v Taylor* (1802) cited in 7 Ves 424; *A-G v Skinners' Co* (1821) Jac 629 at 630 per Lord Eldon LC; *A-G v Winchester Corp* (1824) 3 LJOS Ch 64.

4 *A-G v Ironmongers' Co* (1847) 10 Beav 194.

5 *A-G v Biddulph* (1853) 22 LTOS 114. He may not be allowed costs where the Attorney General's sanction is not first obtained: *A-G v Holland* (1837) 2 Y & C Ex 683.

6 *A-G v Tyler* (1838) Coop Pr Cas 358.

7 *A-G v Bosanquet* (1841) 11 LJCh 43.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(ii) The Relator/624. When further parties allowed to intervene.

624. When further parties allowed to intervene.

Where, owing to their peculiar character and position, relators are incapable of adequately representing and protecting the interests of all the objects of a charity, persons who are not parties to the proceedings may be allowed to intervene in the proceedings, on the understanding, however, that only one bill of costs will be allowed against the charity estate¹.

1 *A-G v Shore* (1836) 1 My & Cr 394. See also *Royal Society for the Prevention of Cruelty to Animals v A-G* (2001) Times, 13 February. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice. The court has a very wide discretion to determine allocation of costs: see PARA 617.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/625. Charity trustees' right to costs.

(iii) Charity Trustees

625. Charity trustees' right to costs.

The rules with respect to the costs of trustees of charities are for the most part the same as those with respect to the costs of trustees for other purposes¹.

Thus, in general, charity trustees who have not been guilty of misconduct expect to be paid out of the trust funds all costs, charges and expenses properly incurred by them in the execution of or in connection with the trust². In particular, under the Civil Procedure Rules, in every detailed assessment of a trustee's costs where he is or has been a party to any proceedings in that capacity and he is entitled to be paid his costs out of the proceedings of any fund which he holds in that capacity, costs are to be assessed on the indemnity basis³. If parties to

proceedings who are ordered to pay the trustees' costs are unable to do so, the trustees may recoup themselves out of the charity funds or estate⁴.

1 Shelford's Law of Mortmain (1836) 467; *Man v Ballet* (1682) 1 Vern 43 at 44 per Lord Nottingham LC; and see *A-G v Drummond* (1842) 3 Dr & War 162 at 163-164, where Sugden LC pointed out how in some ways charity trustees are more favoured than ordinary trustees. As to the costs of trustees generally see **TRUSTS** vol 48 (2007 Reissue) PARAS 906-913. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *A-G v Norwich Corpn* (1837) 2 My & Cr 406 at 424 per Lord Cottenham LC.

3 See CPR 48.4; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1807.

4 *A-G v Lewis* (1845) 8 Beav 179.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/626. Charity trustees' liability for costs.

626. Charity trustees' liability for costs.

Where a succession of charity trustees has for a long period acted wrongly but innocently in the administration of the trust, the court may refuse to visit the error of their predecessors upon the present trustees by depriving the latter of their costs¹, but the court's discretion is guided by the circumstances of each case². So, too, if trustees take steps promptly to remedy an innocent and accidental breach of trust, they will not be made to pay the costs³.

Charity trustees ought not to be visited with costs because of the misapprehension of the Charity Commission as to the construction of a public statute⁴.

In relation to an exempt charity⁵, the court may give charity trustees the costs of a successful application to Parliament for an Act to regulate the charity, even though the application is made without the previous sanction of the court⁶; or of an unsuccessful application to which the court's consent has previously been given⁷.

Where the court orders charity trustees to pay costs personally, they may not pay them out of the charity fund. If they do so they will be directed to refund the amount so misapplied⁸.

1 *A-G v Drummond* (1842) 3 Dr & War 162 at 163 per Lord Sugden LC, where the trustees had in error allowed Unitarians to participate in a trust property confined to another body; *A-G v Caius College* (1837) 2 Keen 150, where, notwithstanding certain misapplications, the trustees and their predecessors had accumulated a large amount for the benefit of the foundation.

2 *Shore v Wilson* (1842) 9 Cl & Fin 355, HL, where the trustees in similar circumstances were not allowed their costs. The Charity Commission has power to advise charity trustees: see the Charities Act 1993 s 29; and PARAS 387-388. As to the Charity Commission see PARAS 538-572. The court has a very wide discretion to determine allocation of costs: see PARA 617.

3 *A-G v Drapers' Co, Kendrick's Charity* (1841) 4 Beav 67.

4 *Moore v Clench* (1875) 1 ChD 447 at 450-451 per Jessel MR.

5 As to exempt charities see PARAS 315-318.

6 *A-G v Vigor, Downing College Case* (1805) cited in 2 Russ at 519 per Lord Eldon LC. Costs will not be given where the application is unsuccessful: *A-G v Earl of Mansfield* (1827) 2 Russ 501 at 519 per Lord Eldon LC. See also *Solicitor General for Ireland v Dublin Corpn* (1877) 1 LR 166.

7 *Re Bedford Charity* (1857) 26 LJCh 613. The Charity Commission may give permission to trustees to promote a private Bill: see the Charities Act 1993 s 17(7); and PARA 328.

8 See *A-G v Daugars* (1864) 33 Beav 621 at 624 per Romilly MR; and *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448. See PARA 446.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/627. Charity benefited by breach of trust.

627. Charity benefited by breach of trust.

Where a breach of trust has been committed, the trustees may be refused the costs of an inquiry into the matter, even where the breach has benefited the charity, although the fact that the property has been improved may properly be taken into account in disposing of the costs¹.

1 *Solicitor-General v Bath Corpn* (1849) 18 LJCh 275 at 277 per Wigram V-C, distinguishing *A-G v Caius College* (1837) 2 Keen 150, where, in somewhat similar circumstances, costs were given to trustees who had innocently misapplied trust property to the advantage of the charity; *A-G v Armitstead* (1854) 19 Beav 584, where trustees greatly exceeded the estimate authorised by the court for erecting a building. Cf *Bartlett v Barclays Bank Trust Co Ltd (No 2)* [1980] Ch 515, [1980] 2 All ER 92, where gains made in breach of trust were set off against losses made in breach of trust: see **TRUSTS** vol 48 (2007 Reissue) PARA 1084 et seq.

The court has a very wide discretion to determine allocation of costs: see PARA 617.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/628. Severance of defence in claim for breach of trust.

628. Severance of defence in claim for breach of trust.

Where, in a claim against charity trustees charged with breaches of trust, one of the trustees severs his defence and adopts the view taken by the claimant, he may be allowed to recover his costs on the standard basis out of the charity property, the costs to be recovered from the other trustees¹.

1 *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448. In this case costs were awarded against the other trustees on a party and party basis. This basis was abolished when RSC Ord 62 was reformed and recast by the RSC (Amendment) 1986, SI 1986/632. As to the basis of assessment see now CPR 44.4; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

The court has a very wide discretion to determine allocation of costs: see PARA 617.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/629. Proceedings occasioned by trustees' misconduct.

629. Proceedings occasioned by trustees' misconduct.

If proceedings are rendered necessary by any particular instance of misconduct on the part of trustees, whether they be private individuals or a corporation¹, or by their general dereliction of duty, even where they have not acted corruptly², they must expect to pay the costs occasioned by their improper behaviour³. Thus they may be fixed with the costs of proceedings where they

have claimed unsuccessfully to be entitled beneficially to property belonging to a charity⁴, or have committed a breach of trust and acted in a spirit of animosity⁵, or have wilfully suppressed evidence thereby obstructing the course of justice⁶, or have negligently professed ignorance of matters which they might have ascertained from an examination of their documents⁷; or where they adopt a wrong mode of procedure⁸; or where, pending proceedings instituted for the purpose of having new trustees appointed, they appoint new trustees themselves and this appointment is subsequently set aside⁹.

So, too, on being removed from the trusts on account of their misconduct, charity trustees may be ordered to pay the cost of vesting the trust property in the new trustees¹⁰. Again, where trustees of a religious congregation who refuse to retire on account of holding opinions incompatible with the terms of the trust are removed by the court, they may be made to pay the costs of appointing new trustees¹¹.

When proceedings are necessary to force charity trustees to comply with orders of the Charity Commission¹², the trustees must expect to pay the costs of the proceedings¹³.

1 Eg an appointment of officials contrary to the terms of the trust: *Salop Town v A-G* (1726) 2 Bro Parl Cas 402, HL; *A-G v Lord Carrington* (1850) 4 De G & Sm 140.

2 *East v Ryal* (1725) 2 P Wms 284; *A-G v Stafford Corpn* (1740) Barn Ch 33.

3 *Haberdashers' Co v A-G* (1702) 2 Bro Parl Cas 370, HL (negligent trustees ordered to pay costs of original suit and part of those of the appeal); *A-G v Wilson* (1840) Cr & Ph 1; *A-G v Mercers' Co* (1833) 2 My & K 654 (where a corporation, trustee of a charity, which had failed to apply properly a number of charitable legacies, was ordered to pay the costs of an information filed against it, but not of the subsequent reference to the master to settle a scheme). The court has a very wide discretion to determine allocation of costs: see PARA 617.

4 *A-G v Drapers' Co, Kendrick's Charity* (1841) 4 Beav 67; *A-G v Christ's Hospital* (1841) 4 Beav 73 (where trustees, who had for a long period administered charitable funds erroneously, on being called upon to administer them duly, unsuccessfully insisted on their own rights adversely to the charity); *A-G v Webster* (1875) LR 20 Eq 483 at 492 per Jessel MR (where the trustees disregarded the opinion of their own counsel that the property was charitable, but the Attorney General, by whom this was an ex officio information, did not press the costs against the trustees personally); *Re St Stephen, Coleman Street, Re St Mary the Virgin, Aldermanbury* (1888) 39 ChD 492 (a test case instituted by trustees claiming that certain property was not charitable). See also *A-G v Brewer's Co* (1717) 1 P Wms 376; *A-G v Gibbs* (1847) 1 De G & Sm 156 (affd 2 Ph 327); *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448.

5 *A-G v Stroud* (1868) 19 LT 545.

6 *Hertford Corpn v Hertford Poor* (1713) 2 Bro Parl Cas 377, HL.

7 *A-G v East Retford Corpn* (1833) 2 My & K 35; revsd without affecting this point (1838) 3 My & Cr 484. In *Solicitor-General v Bath Corpn* (1849) 18 LJCh 275 at 277 per Wigram V-C, it was suggested that the court might be compelled to fix charity trustees with constructive notice of a document which they had innocently failed to disclose.

8 *Ludlow Corpn v Greenhouse* (1827) 1 Bli NS 17 at 93, HL.

9 *A-G v Clack* (1839) 1 Beav 467.

10 *Coventry Corpn v A-G* (1720) 7 Bro Parl Cas 235 at 237-238, HL; *Ex p Greenhouse* (1815) 1 Madd 92 at 109 per Plumer V-C.

11 *A-G v Murdoch* (1856) 2 K & J 571. They will not be made to pay costs where they retire voluntarily, though whether they will receive them is a question for the court's discretion, and may depend upon the circumstances of their retirement: *A-G v Murdoch* at 573 per Wood V-C.

12 As to the enforcement of orders of the Commission see PARA 551. As to the Charity Commission see PARAS 538-572.

13 Cf *Re St Brides', Fleet Street, Church or Parish Estate* (1877) 35 ChD 147n; affd [1877] WN 149, CA; *Re Gilchrist Educational Trust* [1895] 1 Ch 367.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/630. Mistaken application for scheme.

630. Mistaken application for scheme.

Where, having paid a fund into court and thereby discharged themselves from the office of trustees, charity trustees prepared an application to the court for a scheme to administer the charity, to which the Attorney General refused his fiat, the trustees were not allowed the costs of the abortive application, although they might have been given their costs in connection with an application by the Attorney General for the same purpose¹.

¹ *Re Poplar and Blackwall Free School* (1878) 8 ChD 543. The court has a very wide discretion to determine allocation of costs: see PARA 617.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/631. Proceedings to obtain accounts.

631. Proceedings to obtain accounts.

As it is the duty of charity trustees to render accounts without application to those to whom they are accountable, they are liable to the costs of proceedings to compel an account, even if in the result the charity proves to be indebted to the trustees. However, if the accounts show that the trustees are not debtors to the trust, no subsequent costs on either side are likely to be given¹. So, too, trustees refusing to render accounts to the Charity Commission² may be ordered to pay the costs of an order for committal³.

¹ *A-G v Gibbs* (1847) 2 Ph 327. The court has a very wide discretion to determine allocation of costs: see PARA 617.

² As to the Charity Commission see PARAS 538-572.

³ *Re Gilchrist Educational Trust* [1895] 1 Ch 367.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/632. Trustees allowed costs.

632. Trustees allowed costs.

Trustees who are made claimants in proceedings without their consent are allowed their costs of having their names struck out¹.

Where unjustifiable proceedings are taken against trustees of a charity, the claimant may be ordered to pay the trustees' costs on the standard basis, so that the charity fund may be preserved intact².

When the official custodian for charities³ has been made a party to legal proceedings the claimants have been ordered to pay his costs⁴.

1 *A-G v Maryatt* (1838) 2 Jur 1060. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 at 112 per Lord Eldon LC; *A-G v Cuming* (1843) 2 Y & C Ch Cas 139 at 155 per Knight Bruce V-C; *Andrews v Barnes* (1888) 39 ChD 133, CA. See *A-G v Holland* (1837) 2 Y & C Ex 683, where an information, which contained false charges against the existing trustees of culpable mismanagement, was in part dismissed with costs, though the earlier part of the information was successful. See PARA 618 note 5.

3 As to the official custodian for charities see PARA 297 et seq.

4 *Re Church Patronage Trust, Laurie v A-G* [1904] 1 Ch 41 at 51 per Buckley J, where the plaintiffs failed in their summons and were ordered to pay the costs of the Official Trustee of Charity Lands (now replaced by the official custodian for charities).

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iii) Charity Trustees/633. Where property forfeited.

633. Where property forfeited.

Where, owing to a breach of a condition by charity trustees, part of the charity property is held to be forfeited, the trustees are not entitled to their costs of an unsuccessful appeal against the decision, the only fund out of which those costs would be payable being no longer in their possession¹.

1 *A-G v Grainger* (1859) 7 WR 684. The court has a very wide discretion to determine allocation of costs: see PARA 617.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iv) Costs in relation to Charitable Gifts by Will/634. Costs of construction claim.

(iv) Costs in relation to Charitable Gifts by Will

634. Costs of construction claim.

As a rule the costs of a claim for construction occasioned by obscurity in a will, for example to determine whether a particular charitable bequest is valid¹, are payable out of the testator's residuary personal estate²; but there is no absolute right to costs out of the estate, and the causing of unnecessary expense is discouraged by withholding costs³. Costs of an administration action are included in the words 'testamentary expenses', a direction as to which is often included in a will⁴.

If a dispute arises between persons claiming a charitable legacy and persons claiming the residue as to whether the legacy is or is not payable, the costs of the litigation are payable out of the estate⁵. An executor cannot relieve the residue of its proper burden by paying a disputed charitable legacy into court⁶.

1 *Kirkbank v Hudson* (1819) 7 Price 212 at 222 per Lord Richards CB; *A-G v Hinxman* (1820) 2 Jac & W 270 at 278 per Plumer MR; *Giblett v Hobson* (1833) 5 Sim 651 at 662 per Shadwell V-C (affd (1834) 3 My & K 517); *Daly v A-G* (1860) 11 I Ch R 41.

2 *Philpott v President and Governors of St George's Hospital, A-G v Philpott* (1857) 6 HL Cas 338 at 374 per Lord Wensleydale; *Wilson v Squire* (1842) 13 Sim 212; *Daly v A-G* (1860) 11 I Ch R 41 at 49; and see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 746 et seq.

3 See *Re Amory, Westminster Bank Ltd v British Sailors' Society Inc at Home and Abroad* [1951] 2 All ER 947n (costs withheld); *Re Daysh, Dale v Duke of Richmond and Gordon* (1951) 1 TLR 257 per Wynn-Parry J, where the costs were allowed in the particular circumstances of the case. Costs may also be disallowed where they are incurred in preferring hopeless claims: see PARA 636 note 1. The court has a very wide discretion to determine allocation of costs: see PARA 617.

4 *Penny v Penny* (1879) 11 ChD 440.

5 *A-G v Lawes* (1849) 8 Hare 32 at 43 per Knight Bruce V-C.

6 *Re Birkett* (1878) 9 ChD 576 at 581 per Jessel MR.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iv) Costs in relation to Charitable Gifts by Will/635. Dispute as to legacy severed from estate.

635. Dispute as to legacy severed from estate.

If executors admit a legacy to be payable and sever it from the estate, and a dispute afterwards arises between the persons to whom or to some of whom the legacy belongs, and the court has to decide to whom it belongs, the legacy bears the cost¹. Thus, where executors have appropriated a charitable legacy and divided the residue, the costs of proceedings to secure the legacy must be paid out of it². The mere fact that executors have set apart a sum to meet the legacy, if payable, does not constitute a severance³.

An admission by an executor of assets for the payment of a charitable legacy extends to an admission of assets for the payment of costs to secure payment of the legacy, if the court thinks fit to direct them⁴.

1 *A-G v Lawes* (1849) 8 Hare 32 at 43 per Knight Bruce V-C; *Re Lycett, Riley v King's College Hospital* (1897) 13 TLR 373 (ambiguous bequest to charitable institution wrongly described). The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *Governesses' Benevolent Institution v Rusbridger* (1854) 18 Beav 467.

3 *A-G v Lawes* (1849) 8 Hare 32.

4 *Philanthropic Society v Hobson* (1833) 2 My & K 357.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iv) Costs in relation to Charitable Gifts by Will/636. Charities claiming bequest.

636. Charities claiming bequest.

Where a testator occasions difficulty to his executors in administering his estate by misdescribing a charitable institution which he intends should receive a legacy, and more than one institution claims the legacy, the costs even of the unsuccessful claimants, on the standard basis, notwithstanding the opposition of the residuary legatees, are often directed to be paid out of the estate; but where in the court's opinion a claim is hopeless and not made in good

faith, the unsuccessful claimant may be ordered to pay his own costs, and in some cases may be ordered to pay the costs of other parties¹.

1 *Re Clarke, Clarke v St Mary's Convalescent Home* (1907) 97 LT 707; and cf *Re Lycett, Riley v King's College Hospital* (1897) 13 TLR 373, where the costs were made payable out of the legacy, presumably on the ground that it had been severed from the estate. Farwell J stated that a society which appeared in court to support a claim which was not admitted must not expect as of right to be paid its costs out of the estate, and might in certain events have to pay costs: *Re Millington* (1932) Times, 14 January referred to in *Re Preston's Estate, Raby v Port of Hull Society's Sailors' Orphans' Homes* [1951] Ch 878, [1951] 2 All ER 421 (costs of claimants not allowed after a point in the proceedings where it had become clear that the claims were hopeless); *Re Vernon's Will Trusts, Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry)* [1972] Ch 300n, [1971] 3 All ER 1061n (where (although this does not appear from the report) the second defendant was not allowed its costs out of the estate). See also PARA 645.

The court has a very wide discretion to determine allocation of costs: see PARA 617.

In practice, proceedings can often be avoided by an approach to the Treasury Solicitor to discover what view would be taken by the Attorney General were the matter to come before the court, and, if a firm view is given, to act on that basis. This is an inexpensive way of dealing with the misdescription of charities in a will and apparent cases of initial failure where a cy-près scheme may be made by the Charity Commission if all concerned agree. As to the cy-près doctrine see PARA 208 et seq. As to the Treasury Solicitor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 541.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(iv) Costs in relation to Charitable Gifts by Will/637. Costs in administration claim.

637. Costs in administration claim.

Where the next of kin¹ are made parties to a claim for administration relating to a charity and raise no improper point, they are as a rule, though not as of right², allowed their costs on the standard basis, even where their claim does not succeed³, and they may be allowed charges and expenses as well⁴.

The rule that the costs of an administration action were payable out of residue generally, and not primarily out of a lapsed share, applied when that share was given to a charity and lapsed⁵, but the rule seems to have been superseded⁶.

1 Most of the cases referred to in notes 2-5 are cases in which it was the heir at law who was made a party. The principle must apply in just the same way to persons entitled under the Administration of Estates Act 1925 s 46: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 619 et seq. If the heir at law brought an unnecessary suit, the costs were directed to be paid out of the real estate: *Leacroft v Maynard* (1791) 1 Ves 279.

2 *Whicker v Hume* (1851) 14 Beav 509 at 528 per Romilly MR (where the heir was only given party and party costs); *Aria v Emanuel* (1861) 9 WR 366; *Wilkinson v Barber* (1872) LR 14 Eq 96 at 99 (next of kin).

3 *A-G v Haberdashers' Co* (1793) 4 Bro CC 178; *Currie v Pye* (1811) 17 Ves 462; *A-G v Kerr* (1841) 4 Beav 297 at 299; *James v James* (1849) 11 Beav 397 (heir at law cases); *Gaffney v Hevey* (1837) 1 Dr & Wal 12 at 25; *Carter v Green* (1857) 3 K & J 591 at 608; *Lewis v Allenby* (1870) LR 10 Eq 668 (next of kin cases).

4 *A-G v Haberdashers' Co* (1793) 4 Bro CC 178; *A-G v Kerr* (1841) 4 Beav 297. The court has a very wide discretion to determine allocation of costs: see PARA 617.

5 *Blann v Bell* (1877) 7 ChD 382; contra, *Taylor v Mogg* (1858) 27 LJCh 816; and see *Linley v Taylor* (1859) 1 Giff 67.

6 See the Administration of Estates Act 1925 s 34(3), Sch 1 Pt II para 1, whereby, as regards solvent estates, property of the deceased undisposed of by will becomes primarily liable, subject to the retention of a fund to

meet pecuniary legacies, for testamentary and administration expenses; but this is subject to any contrary provision in the will. See also **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 417.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(v) Payment and Apportionment of Costs Payable out of Charity Funds/638. Costs charged on estates or income.

(v) Payment and Apportionment of Costs Payable out of Charity Funds

638. Costs charged on estates or income.

A charge¹ of the whole or part of the charity estates may be ordered for the payment of costs. Sometimes the payment of costs may be directed out of the income of a charity fund².

It has been held that, where proceedings are taken in respect of one only of several gifts belonging to a charity, the costs should in the first instance fall on the property which is the subject of the proceedings; but a different provision may be made if justice to the relator or the interests of the charity require it³.

1 *A-G v Atherstone School Governors* (1833) Shelford's Law of Mortmain 477; *A-G v Bishop of St David's* (1849) Seton's Judgments and Orders (7th Edn, 1912) 1269; *Re Lambeth Charities* (1850) Seton's Judgments and Orders (7th Edn, 1912) 1247; *A-G v Archbishop of York* (1853) 17 Beav 495; *A-G v Murdoch* (1856) 2 K & J 571. The court might possibly order a sale of part of the charity estates for the same purpose under its general power to authorise a sale of charity lands: *A-G v Newark-upon-Trent Corpn* (1842) 1 Hare 395; *A-G v Nethercoat* (1840) cited in 1 Hare 400. As to mortgages generally see **MORTGAGE**.

2 *A-G v Smythies* (1853) 16 Beav 385, where the costs of an application by a new master of a hospital for payment of the income of a fund in court was held payable out of the income. It was held that where a charitable corporation is ordered to pay costs, and it is entitled to a fund representing the proceeds of sale of part of its property, the party to whom the costs are payable may charge them upon that fund: *A-G v Thetford Corpn* (1860) 8 WR 467.

The court has a very wide discretion to determine allocation of costs: see PARA 617.

3 *A-G v Kerr* (1841) 4 Beav 297 at 303 per Lord Langdale. As to relators see further PARA 607 et seq. Relator proceedings are now rare in practice.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(v) Payment and Apportionment of Costs Payable out of Charity Funds/639. Apportionment of costs.

639. Apportionment of costs.

The costs of settling one scheme for a number of charities are apportioned rateably, though primarily they may be made payable out of a fund not belonging to all the charities¹. Where a charity includes two classes of estates, both of which are the subject of proceedings, the costs of establishing a scheme for the regulation of one estate only are borne by that estate². Similarly, where several distinct charities are vested in the same set of trustees, the costs of proceedings relating to one charity alone must be borne entirely by that charity³.

1 *Re Stafford Charities* (1858) 26 Beav 567. For a form of order apportioning costs see *Re Saffron Walden Charity* (1857) Seton's Judgments and Orders (7th Edn, 1912) 1250. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *A-G v Skinners' Co* (1827) 2 Russ 407 at 446 per Lord Eldon LC.

3 *A-G v Grainger* (1859) 7 WR 684.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(vi) Costs where Charity Land is Compulsorily Acquired/640. Costs on compulsory acquisition.

(vi) Costs where Charity Land is Compulsorily Acquired

640. Costs on compulsory acquisition.

Where land belonging to a charity is compulsorily acquired under the provisions of the Compulsory Purchase Act 1965¹, and the compensation is paid into court under those provisions², the High Court may order³ the acquiring authority to pay the costs, including all reasonable charges and expenses, of or incurred in consequence of the purchase of the land⁴, of the investment of the compensation in court or of its reinvestment in the purchase of other land⁵, and of all proceedings relating to orders for those matters except such as are occasioned by litigation between adverse claimants⁶.

Where the legal estate in the land is vested in the official custodian for charities⁷, and the compensation has been fixed, the official custodian is under no obligation to receive the compensation so as to relieve the acquiring authority from the cost of payment into court and investment⁸.

1 As to sales under compulsory purchase powers see PARA 410; and **COMPULSORY ACQUISITION OF LAND**.

2 See the Compulsory Purchase Act 1965 s 2, Sch 1 para 6(2); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 555.

3 The power does not apply where payment into court was necessitated by wilful refusal to accept the money or convey the property, or wilful neglect to make a good title: see Compulsory Purchase Act 1965 s 26(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 666.

4 See the Compulsory Purchase Act 1965 s 26(2)(a), (3); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 666.

5 See the Compulsory Purchase Act 1965 s 26(2)(b), (3); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 666. As to when the costs of more than one application for reinvestment in land are allowed see s 26(4); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 666.

6 See the Compulsory Purchase Act 1965 s 26(3)(d); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 666. The court has a very wide discretion to determine allocation of costs: see PARA 617.

7 As to the official custodian for charities see PARA 297 et seq.

8 Cf *Re Leeds Grammar School* [1901] 1 Ch 228.

Halsbury's Laws of England/CHARITIES (VOLUME 8 (2010) 5TH EDITION)/11. COURT PROCEEDINGS/(6) COSTS/(vi) Costs where Charity Land is Compulsorily Acquired/641. Costs of payment out of compensation or dividends on it.

641. Costs of payment out of compensation or dividends on it.

An application by charity trustees for the transfer to the account of the official custodian for charities¹ of a fund paid into court and invested in government securities is regarded as an application for the payment of money out of court, and the acquiring authority is liable for the costs of the application². After the fund has been paid or transferred to the official custodian, the costs of the subsequent reinvestment are not payable by the acquiring authority³.

The acquiring authority is not liable for costs where the dividends arising from a fund in court have been ordered to be paid to existing trustees of a charity and a fresh application to the court is rendered necessary owing to the appointment of new trustees⁴.

Where, after land belonging to a charity has been compulsorily acquired⁵ and the usual order for investment of the compensation and payment of the dividend to the then trustees of the charity has been made, the constitution of the charity is altered by a scheme, the acquiring authority may be directed to pay the cost of an application for payment out of part of the fund to cover the expenses of the new scheme⁶. Again, where in such a case an application is made to sanction a scheme applying the compensation *cy-près* and for payment out to trustees to carry out the scheme, the costs, so far as they are increased by the necessity for a scheme, may be excepted from the costs payable by the acquiring authority⁷.

1 As to the official custodian for charities see PARA 297 et seq.

2 *Re Bristol Free Grammar School Estates* (1878) 47 LJCh 317; *Re Bishop Monk's Horfield Trust* (1881) 43 LT 793; *Re Rector and Churchwardens of St Alban's, Wood Street* (1891) 66 LT 51. See *Re London, Brighton and South Coast Rly Co* (1854) 18 Beav 608. The court has a very wide discretion to determine allocation of costs: see PARA 617.

3 *Re Bishop Monk's Horfield Trust* (1881) 43 LT 793.

4 *Re Andenshaw School* (1863) 1 New Rep 255. It is otherwise where the charity has been reconstituted under a scheme: *Re Shakespeare Walk School* (1879) 12 ChD 178; cf *Re St Paul's Schools, Finsbury* (1883) 52 LJCh 454.

5 As to the compulsory acquisition of land see PARA 640; and **COMPULSORY ACQUISITION OF LAND**.

6 *Re Shakespeare Walk School* (1879) 12 ChD 178; *Re Wood Green Gospel Hall Charity, ex p Middlesex County Council* [1909] 1 Ch 263. As to the direction of schemes see PARA 177 et seq.

7 *Re St Paul's Schools, Finsbury* (1883) 52 LJCh 454.

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(vii) Miscellaneous Provisions as to Costs

642. Assessment on order of Charity Commission.

The Charity Commission¹ may order that a solicitor's bill of costs for business done for a charity², or for charity trustees³ or trustees for a charity, be assessed, together with the costs of the assessment, by a costs officer in such division of the High Court as may be specified in the order, or by the costs officer of any other court having jurisdiction to order the assessment of the bill⁴. On any such order the assessment must proceed, and the costs officer has the same powers and duties, and the costs of the assessment must be borne, as if the order had been made, on the application of the person chargeable with the bill, by the court in which the costs are assessed⁵. If the bill has already been paid, an order may not be made under this provision unless the Commission thinks it contains exorbitant charges⁶. No such order may be made

where the solicitor's costs are not subject to an assessment on an order of the High Court by reason either of an agreement as to his remuneration or of the lapse of time since payment of the bill⁷.

An appeal against an order of the Commission for the assessment of a solicitor's bill lies to the Tribunal⁸ at the instance of the Attorney General, the solicitor, any person for whom the work was done by the solicitor, and any other person who is or may be affected by the order⁹. The Tribunal has the power to do any of the following: (1) quash the order; (2) substitute for the order any other order which could have been made by the Commission; (3) add anything to the order which could have been contained in an order made by the Commission¹⁰.

1 As to the Charity Commission see PARAS 538-572.

2 As to the meaning of 'charity' see PARA 1.

3 As to the meaning of 'charity trustees' see PARA 1 note 9.

4 Charities Act 1993 s 31(1) (s 31 amended by the Charities Act 2006 s 75(1), Sch 8 paras 96, 123). In practice, the Charity Commission does not exercise its power to order assessment of a solicitor's bill of costs. The Law Society has a procedure in non-contentious business whereby on the application of a party it can issue a remuneration certificate.

5 Charities Act 1993 s 31(2).

6 Charities Act 1993 s 31(3) (as amended: see note 4).

7 Charities Act 1993 s 31(3) (as amended: see note 4). As to the relevance of lapse of time see in particular the Solicitors Act 1974 s 70; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 971.

8 As to the Tribunal see PARA 573 et seq.

9 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Cols 1, 2 (added by the Charities Act 2006 s 8(1), (3), Sch 4).

10 Charities Act 1993 s 2A(4)(a), Sch 1C para 1(1), (2), Table Col 3 (as added: see note 15).

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643. Costs on the standard basis.

In matters of equitable jurisdiction the court has power to order an unsuccessful litigant to pay the costs of the claim on the standard basis¹. In many cases costs have been allowed out of a charity fund to all parties², or to some of them³.

1 *Andrews v Barnes* (1888) 39 ChD 133, CA. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *A-G v Carte* (1746) 1 Dick 113; *Moggridge v Thackwell* (1803) 7 Ves 36 at 69, 88 per Lord Eldon LC; *Bishop of Hereford v Adams* (1802) 7 Ves 324 at 332 per Lord Eldon LC; *Mills v Farmer* (1815) 1 Mer 55; *Gaffney v Hevey* (1837) 1 Dr & Wal 12 at 25; *Wickham v Marquis of Bath* (1865) LR 1 Eq 17 at 25 per Romilly MR; *Re Cardwell*, *A-G v Day* [1912] 1 Ch 779 at 784 per Warrington J (where the costs of all parties were directed to be paid out of three charitable funds in proportion to their respective values).

3 *A-G v Stewart* (1872) LR 14 Eq 17.

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644. Interest on costs.

Although interest is recoverable¹ on costs which one party is ordered to pay to another, it is not recoverable on costs directed to be raised out of a charity estate², unless the court in the exercise of its discretion as to costs so directs³.

1 See the Judgments Act 1838 ss 17, 18; the Administration of Justice Act 1970 s 44; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1149. See the non-charity case *Taylor v Roe* [1894] 1 Ch 413. As to interests on judgment debts expressed in currencies other than sterling, see the Administration of Justice Act 1970 s 44A; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1149.

2 *A-G v Nethercote* (1841) 11 Sim 529.

3 *A-G v Bishop of St David's* (1849) Seton's Judgments and Orders (7th Edn, 1912) 1269 (and see Seton's Judgments and Orders (6th Edn, 1901) 1290 for the form of order), where 4% interest was given. This rate might now be 8%, which is the rate applicable under the Judgments Act 1838 s 17: see **CIVIL PROCEDURE** vol 12 (2009) PARA 1149.

The court has a very wide discretion to determine allocation of costs: see PARA 617.

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645. When costs allowed out of charity funds.

The costs of making an unsuccessful application to the court in a charity matter may be given out of the charity funds, if there are substantial grounds for the application, although it may be induced by private interest¹, or even if the grounds of the application are based in good faith on a misconception of law². The costs of vexatious proceedings³, or of proceedings taken under an inappropriate procedure⁴, are not allowed out of the charity funds. In some cases unsuccessful applications in charity matters are dismissed without costs⁵.

Where an unnecessary party, by setting up a claim, renders service of process upon him necessary, costs will not be paid to him out of the charity funds⁶. Where a person who is not personally interested in a charity attends proceedings before a master, he will not be given his costs out of the charity funds⁷ unless he can show that the charity is likely to derive benefit from his attendance⁸.

Even though it is the court's duty in charity cases to grant the proper relief, whether it has been asked or not⁹, the question of costs may depend upon the form of the application¹⁰.

1 *Re Storie's University Gift* (1860) 2 De GF & J 529.

2 *Re Betton's Charity* [1908] 1 Ch 205 at 212 per Swinfen Eady J. The court has a very wide discretion to determine allocation of costs: see PARA 617.

3 *Re Chertsey Market, ex p Walthew* (1819) 6 Price 261, where there was great delay in bringing forward charges of breach of trust against the representatives of deceased trustees, and the proceedings were accordingly held vexatious.

- 4 *Re Phillipott's Charity* (1837) 8 Sim 381. The summary procedure on petition provided by the Charities Procedure Act 1812 (Romilly's Act; repealed by the Charities Act 1960 ss 28(9), 48(2), Sch 7) was held to be appropriate only for simple cases: *Ludlow Corp'n v Greenhouse* (1827) 1 Bli NS 17, HL.
- 5 *A-G v Stewart* (1872) LR 14 Eq 17 at 25 per Malins V-C.
- 6 *Re Shrewsbury School* (1849) 1 Mac & G 85.
- 7 *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324 at 334 per Lord Cottenham LC.
- 8 *Re Shrewsbury Grammar School* (1849) 1 Mac & G 324 at 335 per Lord Cottenham LC.
- 9 As to this principle, which is in practice now obsolete, see PARA 592 note 2.
- 10 *A-G v Hartley* (1820) 2 Jac & W 353 at 369 per Lord Eldon LC. See also PARA 592.

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646. Co-defendant liable for trustee defendants' costs.

Where the Attorney General takes proceedings on behalf of a charity and there are two sets of defendants, namely the trustees of the charity and another party who, in the event, is adjudged liable to pay the costs, the court may direct the defendant so liable to pay the costs of the trustees directly instead of ordering the trustees' costs to be paid out of the charity funds and afterwards to be repaid by that defendant¹.

- 1 *A-G v Chester Corp'n* (1851) 14 Beav 338 at 341. See also *A-G v Mercers' Co, Re St Paul's School* (1870) 18 WR 448 at 450 per James V-C, and the non-charity cases of *Rudow v Great Britain Mutual Life Assurance Society* (1881) 17 ChD 600 at 608, CA, per Jessel MR, and *Sanderson v Blyth Theatre Co* [1903] 2 KB 533, CA.

The court has a very wide discretion to determine allocation of costs: see PARA 617.

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647. Costs of proceedings to set aside lease.

As a rule the costs of proceedings to set aside an improvident lease of charity lands are paid by the lessee¹; but the costs of setting aside a lease at an undervalue made in pursuance of a direction in a will which the court holds to be void as a perpetuity may be directed to be paid by the lessor².

- 1 *A-G v Lord Hotham* (1823) Turn & R 209 at 220-222 per Plumer MR. The court has a very wide discretion to determine allocation of costs: see PARA 617.

- 2 *A-G v Greenhill* (1863) 33 Beav 193, where the costs were awarded on what is now the standard basis.

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648. Costs of appeals.

There must be a substantial ground for an appeal by defendants in a charity suit to exempt them from payment of costs if the appeal is unsuccessful¹. As a rule, in the case of appeals, costs of all parties should not be given out of the charity funds, as such a practice tends to encourage groundless appeals².

1 *A-G v Rochester Corpn* (1854) 5 De GM & G 797. The court has a very wide discretion to determine allocation of costs: see PARA 617.

2 *Bruce v Deer Presbytery* (1867) LR 1 Sc & Div 96 at 98, HL, per Lord Cranworth.